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BY THE AUTHORITY OF THE POOR LAW COMMISSIONERS.

AN ABRIDGMENT

OF THE

CASES

UPON THE

SUBJECT OF THE POOR LAW,

DECIDED SINCE THE PASSING OF THE 4 & 5 WILL. IV. c. 76.

AND

A COLLECTION OF THE SUBSEQUENT ENACTMENTS
UPON THE SAME SUBJECT.

BY

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BARRISTER-AT-LAW, ONE OF THE ASSISTANT SECRETARIES OF THE POOR LAW
COMMISSIONERS.

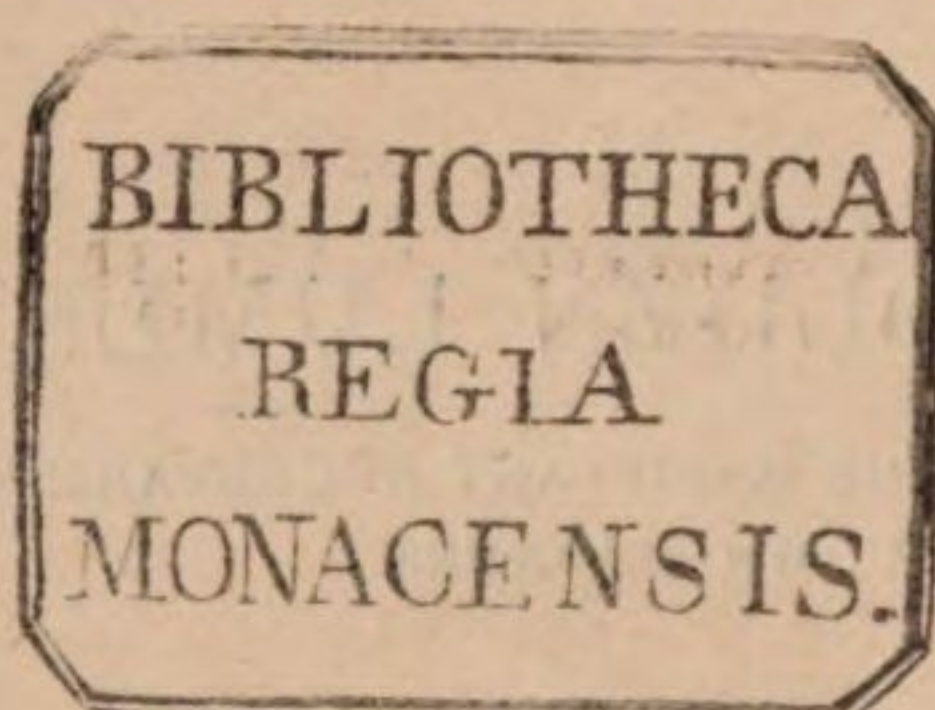
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INTRODUCTORY NOTE.

I HAVE compiled another volume of the Abridgment of the Cases which have been decided, and the Statutes which have been passed, on the subject of the laws for the relief of the poor, since the passing of the Poor Law Amendment Act in 1834, completing the series up to the end of the last year, and trust that it will prove of some use to the many persons now engaged upon that important subject. I have preserved the arrangement adopted in the first volume as nearly as the materials would permit, and now repeat that arrangement. The order is as follows:—

1. Those Cases which are applicable to the Powers of the Commissioners.
2. Those relative to the Guardians and Overseers.
3. To Parochial Property.
4. To the Poor Rate.
5. To the Maintenance of Bastards.
6. To the Relief and Removal of Paupers.
7. To the Settlement of Paupers.
8. To the Practice on Appeals.
9. Evidence.

Lastly. The Statutes passed during the last two years.

W. G. LUMLEY.

*Poor Law Commission Office,
Feb. 17, 1843.*

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For an explanation of the abbreviations in the references, see Vol. I. p. 417, to which it must be added, that—

A. & E. (n. s.)	signifies	The New Series of Adolphus and Ellis's Reports.
D. P. C. . . .	,,	Dowling's Practice Cases.
D P. C. (n. s.)	,,	The New Series of Dowling's Practice Cases.
G. & D. . . .	,,	Gale and Davison.

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POOR LAW COMMISSIONERS.

Power to appoint Officers to a Gilbert's Union.

Queen v. The Poor Law Commissioners. *In re* Alstonefield Incorporation, 11 A. & E. 558 : S. C. 3 P. & D. 59 : 9 L. J. R. (n. s.) M. C. 33.

THE Alstonefield Incorporation, consisting of forty-two parishes and townships in Derbyshire and Staffordshire, was formed in 1818, under Gilbert's Act, 22 Geo. III. c. 83, and continues to be managed by Guardians elected under that Act. In March, 1837, the Poor Law Commissioners issued an order, directing the Guardians to elect a Chairman and Vice-Chairman, prescribing rules for conducting the business of their meetings, and ordering them to appoint certain officers, among others a Clerk and an Auditor. The duties of these officers were set out in full, and were for the most part such as are prescribed to the similar officers appointed in the Unions formed under the Poor Law Amendment Act. The Clerk was directed, among other duties, "To prepare or superintend the preparation, and take measures for ensuring the prompt and correct return of all such statistical information and reports as may be required for the public service." The Guardians refused to obey the order, but obtained a rule *Nisi* for a *Certiorari*, to bring up this order to be quashed, alleging by their affidavits that they had a Visitor appointed under Gilbert's Act, who duly performed the duties of his office, and that the accounts relating to the poor had been satisfactorily kept by a treasurer, at a salary of 6*l.* a year, which were audited and examined by the Visitor, according to the statute, and that he attended the monthly meetings of the Guardians, and had made and kept the entries and minutes of the business without any expense to the Incorporation. It was stated that by the order of the Commissioners an expense of 400*l.* per annum would be incurred.

The objections to the order were, that it would in effect su-

persede the whole system introduced by the 22 Geo. III. c. 83, whereas the Gilbert's Unions were expressly preserved by the Poor Law Amendment Act; that the appointment of a Clerk and Auditor would take away the duties prescribed to the Visitor and Treasurer; that the regulations were unnecessarily minute for the existing Incorporation; the duties required from the Clerk and Auditor were more complicated than what the Commissioners could impose, and would be attended with an unnecessary expense; and that the duty imposed on the Clerk of preparing and returning statistical information was new, and could not be legally exacted.

In support of the order, it was contended that the Commissioners had a full power to control the Gilbert's Unions in the administration of relief, and could direct the appointment of officers, under section 46, by the Guardians of such Unions; that the officers directed by the Commissioners to be appointed would in no respect interfere with the officers whose duties are prescribed by the 22 Geo. III. c. 83. The Commissioners have power, under section 15 of the Poor Law Amendment Act, to introduce a new system of audit, and the Auditor is properly appointed to carry it out, while the duties assigned to the Clerk are important with reference to the provisions contained in the new Act, and were not contemplated by Gilbert's Act.

The Court took time for deliberation.

Lord Denman, C. J., afterwards delivered the judgment of the Court—" * * * It was urged that the Statute 4 & 5 Will. IV. c. 76, expressly saved the operation of Statute 22 Geo. III., c. 83, in all matters not specifically altered or subjected to the control of the Commissioners, and that the appointments in question fell within that rule, and were also inconsistent with the provisions of 22 Geo. III. c. 83."

His Lordship then stated a summary of the provisions of that Act, with reference to the raising of money and the accounts of the several parishes in the Union, and continued:—" These are the provisions made by the Act for the discharge

“ of the duties of an Auditor, and we cannot but think that,
 “ even with reference to the expenditure under the former sys-
 “ tem for the relief of the poor, these provisions were very inade-
 “ quate. So long as the Guardians and Treasurer are agreed
 “ upon the general accounts of the latter, the Visitor has no
 “ authority to interfere at all; and, when he interposes, it does
 “ not appear that he has any power to control the expenditure
 “ or question the orders of the Guardians: his interference seems
 “ to be limited to ascertaining the accuracy of the sums and the
 “ accordance of the items with their orders. * * *

“ But whatever might have been thought of the sufficiency of
 “ the Visitor as an Auditor before the recent change in the
 “ poor law, as the Guardians are now to execute their duties
 “ under the control, and subject to the rules, orders, and regula-
 “ tions, of the Poor Law Commissioners (Statute 4 & 5 Will. IV.
 “ c. 76, § 21); and as their expenditure and mode of account-
 “ ing have been by some of such rules, which are unquestionably
 “ binding, placed under new restraints,—a necessity has arisen
 “ for an inspection and audit of their accounts, which it is cer-
 “ tain the Visitor has no authority to institute. If, therefore,
 “ the Commissioners have the power to direct the appointment
 “ of any officers in such a Union, no one can doubt the pro-
 “ priety of their doing so in the case of an Auditor. The 46th
 “ section has words large enough to extend to this Union, and
 “ in terms embraces the case of an officer for the auditing, al-
 “ lowing, or disallowing of accounts. Nor is there anything in
 “ this inconsistent with the provisions of Gilbert’s Act. * * *
 “ The former Visitor will continue to perform his duty, but is
 “ incompetent to discharge that of Auditor, and the Commis-
 “ sioners supply the want under the authority of the 46th sec-
 “ tion. * * *

“ It is impossible to read the order which regulates for the
 “ future the manner in which the Guardians are to manage its
 “ affairs, without feeling that it is necessary for them to have
 “ the assistance of an intelligent Clerk. It is stated that at
 “ present the Treasurer discharges the duties of that office, not

“ by virtue of any independent appointment as Clerk, but as
 “ Treasurer under the Gilbert Act. We turn, therefore, to the
 “ 12th section of that Act, which defines his duties, but these
 “ are confined to the receipt and payment of moneys and the
 “ keeping of accounts. * * * It is clear that this is not such a Clerk
 “ as is now necessary, and equally so that the Commissioners
 “ have authority to appoint such an officer in this Union. The
 “ order describes his duties, and they make it clear that he is
 “ assisting in the administration of the relief and employment of
 “ the poor, and in otherwise carrying the provisions of the New
 “ Poor Law Act into execution. * * *

“ But we regret to find that other duties are imposed upon
 “ him, which appear to us clearly to go beyond the limits of
 “ the Poor Law Amendment Act. * * * The most obvious of
 “ these are specified in Rule 5, the preparing or superintend-
 “ ing the preparation, and taking measures for ensuring the
 “ prompt and correct return of all such statistical information
 “ and reports as may be required for the public service. This
 “ may be very desirable in itself, but it must lead to expense in
 “ the way of salary and contingencies, which the Commissioners
 “ have no right to impose on the parishes forming the Union,
 “ and is too remotely and indirectly, if at all, connected with
 “ the object of the Poor Law Amendment Act, to be within
 “ their jurisdiction.

“ Upon this ground we think the order, which is entire,
 “ cannot be supported. * * *

Rule for the *certiorari* absolute.

Power to direct the appointment of Officers.—Chaplain.

Q. v. The Guardians of the Poor of the Braintree Union. 1 A. & E. (n. s.) 130 :
 S. C. 4 P. & D. 593 : 10 L. J. R. (n. s.) M. C. 76.

THE Poor Law Commissioners issued an order to the Guardians of the Braintree Union, to appoint a Chaplain of the Union Workhouse within a given time, which was not obeyed, and the Commissioners obtained a *mandamus* to the Guardians to make the appointment. To this writ the Guardians returned

that the order had not been sent to one of the Secretaries of State, although it was similar to an order which had been issued to another Union, namely, the Royston Union; that the Commissioners had previously issued an order, still unrevoked, directing the Guardians to appoint a chaplain, in case they should deem it necessary; and that in their judgment and discretion they did not deem it necessary to appoint a chaplain.

In support of the writ it was argued that this was not a general rule within the meaning of the 4 & 5 Will. IV. c. 76, §§ 42 and 109, not being addressed to nor affecting more than one Union when issued.

This was conceded.

Then the former order, though not in terms revoked, is so in effect, as the present order is inconsistent with it; consequently the Guardians had no discretion in reference to the appointment of the chaplain, and the Commissioners were justified in ordering the appointment of such an officer by the 4 & 5 Will. IV. c. 76, § 46, the term "officer" comprehending, according to § 109, a clergyman.

Against the order it was contended that the statute conferred no power upon the Commissioners to order the appointment of such an officer as a chaplain; and by the law in force at the time of the passing of the act such an officer could not be appointed at the expense of the poor-rate. A chaplain is not such an officer as is contemplated by the 46th section, as necessary for superintending or assisting in the administration of the relief and employment of the poor. It is true that the word clergyman occurs in the interpretation clause, but the use of such word alone will not give the authority contended for. The Court have so determined with reference to a collector, who is mentioned in that clause, yet the order of the Commissioners directing his appointment was held to be invalid. (*Q. v. the Poor Law Commissioners. In re The Cambridge Union*, 9 A & E, 911.*) The word has been used either incautiously, or to

* See vol. i. of this Abridgment, page 32.

meet the cases where chaplains have been appointed under the authority of Local Acts. Then there is no reason of expediency which justifies the exercise of this power, for the Commissioners cannot tell who are proper persons to be the chaplains of the particular Unions, according to the religious persuasion of the great body of the inhabitants. However this may be, the Commissioners have issued an order giving a discretion to the Guardians, and have not revoked it. They ought to have issued an express revocation of their former order.

The Court took time to deliberate.

Lord Denman, C. J., delivered the judgment of the Court.
 “ This argument brought into question the validity of the writ
 “ of *mandamus*, which directed the Guardians to appoint a
 “ chaplain to a union workhouse, according to an order of the
 “ Poor Law Commissioners, on the ground that the order is
 “ not warranted by the Act. The defendants denied that such
 “ a power is given by the Act, and properly called on the pro-
 “ secutors to show what provision of the Act could be carried
 “ into execution by the chaplain of a workhouse, as the paid
 “ officers to be appointed under the 46th section must be ap-
 “ pointed either with reference to the administration of the relief
 “ and employment of the poor, or to auditing of accounts, or to
 “ the general terms ‘otherwise carrying the provisions of this
 “ Act into execution,’ and it was admitted that the appointment
 “ could not be referred to either of the former objects.

* * *

“ It is true that no provision is to be found in the Act in
 “ question directly authorising the appointment of a chaplain,
 “ or even using the word chaplain, or any word of a similar
 “ import; but the 19th section plainly shows the intention of
 “ the legislature that the inmates of the union workhouse, of
 “ whatever religious persuasion, should have religious assistance
 “ from ministers of their own persuasion; it shows, moreover,
 “ that some general regulations for affording such assistance to
 “ the inmates were intended, as well as some exceptions and
 “ particular regulations in favour of those who dissented and

“ could not conscientiously reap the benefit of general regula-
 “ tions. Then the 42nd section, giving power to the Commis-
 “ sioners to make rules and regulations for the government of
 “ workhouses, makes it further incumbent upon them to carry
 “ into effect the intentions of the legislature as shown in the
 “ 19th section. In these sections therefore are to be found the
 “ provisions of the Act, as to religious assistance and instruc-
 “ tion to the inmates of the workhouse ; and the 46th section
 “ gives the Commissioners the means of carrying into effect
 “ those provisions in the only way in which it could be done
 “ beneficially, namely, by enabling them to call on the Guar-
 “ dians to appoint a chaplain, with an adequate salary, who, by
 “ the interpretation section, comes clearly under the head of an
 “ ‘ officer.’

“ This is not the only instance of such indirect provision in
 “ this Act. Medical attendance is evidently contemplated, yet
 “ there is no specific enactment as to the appointment of medi-
 “ cal men, but they are included in the interpretation clause,
 “ under the head of ‘ officer,’ in the same manner as clergymen.
 “ Neither were chaplains of workhouses unknown to the law,
 “ for many local Acts of Parliament contain express provisions
 “ respecting their appointment. * * *

“ * * * We have no doubt that the religious instruction of
 “ the inmates was intended to be involved in the management
 “ of the workhouse, and that the legislature actually intended
 “ to give a general power to appoint chaplains, as it found that
 “ power existing in numerous parishes already.

* * *

“ We say nothing on the return which merely offers rea-
 “ sons of expediency and policy against this particular exer-
 “ cise of discretion. Of such matters those to whom the dis-
 “ cretion is confided are the sole judges. Nor do we remark
 “ on the argument respecting the possibility of appointing
 “ ministers of particular sects or persuasions ; the right ques-
 “ tion being that of appointing *any* clergyman.”

Peremptory *mandamus* awarded.

*Power to appoint Returning Officer at the Election of
Guardians.*

Q. v. Hunt. 12 A. & E. 130 : S. C. 3 P. & D. 476 : 9 L. J. R. (n. s.) M. C. 86.

THE Poor Law Commissioners issued an order, dated February 26th, 1839, directing the mode of electing Guardians for the parish of St. Mary, Lambeth. By section 13 they ordered that Dr. Kay, an Assistant Commissioner, should be the returning officer. Section 14 empowered the returning officer to employ a competent number of persons, not being churchwardens or overseers, to assist him in collecting the votes and in conducting and completing the election. And section 15 ordered that any assistants who might be employed by the returning officer should receive such compensation as should be sanctioned by the Poor Law Commissioners; and the said compensation should be paid by the churchwardens and overseers out of the poor-rates of the parish. This order was brought up into the Court of Queen's Bench upon a *certiorari*; and one of the objections which were made to it was, that the Commissioners had empowered their Assistant Commissioner to appoint the assistants, to be paid out of the poor-rates of the parish, and thereby assumed to themselves an unlimited power of rating the parishioners without their consent.

In support of the order it was argued that, as some expense must necessarily be incurred by the returning officer, it was properly charged upon the poor-rates of the parish, as this was not a duty cast by the law upon this person; and that the order was authorised by the general power conferred upon the Commissioners by the 4 & 5 Will. IV. c. 76, § 15, to issue orders for carrying the Act into effect. Then section 46, which refers to the appointment of officers by the Guardians, cannot apply to persons appointed for such temporary purposes as these assistants.

Against the order it was contended that these were "officers" within the 46th section, and could not be thus indirectly appointed by the Commissioners.

Lord Denman, C. J.—"We think the 15th section of the

“ order cannot be supported. The Commissioners had clearly
 “ no power to appoint officers to be paid by the parish. No
 “ payment, indeed, is directed to be made by the returning
 “ officer himself, but the Commissioners cannot, by appointing
 “ a returning officer to act gratuitously, give him the appoint-
 “ ment of paid officers to assist him.”

Patteson, J.—“ * * * These assistants are clearly, by the in-
 “ terpretation clause, section 109, officers within the 46th sec-
 “ tion. They ought therefore to be appointed by the overseers.
 “ With regard to the manner of conducting the election, I do
 “ not wish, as far as my opinion goes, to have it supposed that
 “ the Poor Law Commissioners may not alter their orders from
 “ time to time, as they think fit.”

It was urged that only this part of the order should be
 quashed, but the Court held that the whole must be quashed.

Order quashed.

Power to Interfere with the Alterations of Workhouses.

Q. v. The Poor Law Commissioners. *Ex parte* the Governors and Directors of
 the Poor of Brighton, *M. S. S.*

THE Poor Law Commissioners on the 3rd of December, 1841,
 issued an order directed to the Directors and Guardians of the
 Poor of Brighton, which recited the 21st section of the Poor
 Law Amendment Act, and that the Commissioners had been
 informed that the said Directors proposed to make certain
 alterations at, or additions to, the present workhouse of the
 parish of Brighton, and had caused certain plans and estimates
 of expenditure to be made for such additions or alterations, and
 that they had required the said Directors to submit the same
 for their inspection and examination, so that they might express
 their judgment as to the necessity and propriety thereof, but
 the said Directors had refused so to do. The Commissioners
 thereby prohibited and forbade the said Directors from pro-
 ceeding to carry into effect any alteration or addition to the said
 workhouse, and from applying, raising, or borrowing any money
 for the purpose of providing for the expense of any such alter-
 ation or addition, until the plans and estimates of the expense

thereof should be submitted to them for inspection and examination, and until the same should have been approved of by them.

The parish of Brighton, in regard to the management of the poor, is governed by a local Act, 6 Geo. IV. c. 179, under which Directors and Guardians of the Poor are appointed. The parish has not been united to any other parish, and the Poor Law Commissioners have not issued any rules and regulations to it. Under the local Act the Directors and Guardians are empowered to alter, enlarge, and repair the workhouse, and to borrow to the amount of 10,000*l.* upon the security of the poor-rates for such alterations and additions.

The Directors and Guardians, who had proposed to make certain alterations and additions to the workhouse, disputing the authority of the Commissioners to issue the order, gave due notice of an intention to move for a *certiorari* to bring it up to be quashed; alleging that, the Directors and Guardians being appointed under a local act, the Commissioners had no power to issue the order.

A motion was accordingly made in Trinity Term last for a rule for a *certiorari*.

It was not denied that the Poor Law Commissioners had power to interpose their authority over places governed by local Acts, so as to superintend the erection and alteration of the workhouse; but it was contended that they had no power to issue such an order as the present, which prevented the Guardians from carrying into effect the authorities conferred upon them by the legislature. Either the Commissioners should have issued an order prescribing what should be done, and enforced it by *mandamus*, or they should have gone into a Court of Equity and procured an injunction.

Cause was shown on behalf of the Commissioners in the first instance, and it was contended that this was the only effectual order that the Commissioners could issue, for the purpose of carrying into effect the power contained in the Poor Law Amendment Act.

Lord Denman, C. J., after a few days, gave judgment, and said that the order was lawful and good, and that there was no ground for quashing it; that the legislature never could have contemplated that the Commissioners should apply in such cases as this for a *mandamus* or an injunction.

Rule discharged.

How their Orders are to be questioned.

Q. v. The Guardians of the Poor of the Parish of St. Luke, Middlesex, *M. S. S.*

ON the 21st of December, 1840, the Poor Law Commissioners issued an order to the Guardians of the Poor of the parish of St. Luke, Middlesex, who are elected under a local Act for the management of the poor of that parish, directing them to appoint two relieving officers with certain specified duties. This order not being obeyed, the Commissioners, in Hilary Term, 1841, obtained a writ of *mandamus* to the Guardians, commanding them to obey the order, and appoint relieving officers. To this writ the Guardians made a return, setting out that they had already an officer who was a relieving officer, to whom they had assigned the same duties as those which were prescribed in the order of the Commissioners, and consequently that this order was unnecessary. The return came on to be argued in Easter Term, 1842, when it was contended on the part of the defendants that the order was bad, as the powers conferred upon the Guardians by the local Act rendered the interposition of the Commissioners unnecessary.

The Court, however, adverting to the 105th clause of the Poor Law Amendment Act, expressed a strong opinion that it was not competent for the defendants to urge any objection to the validity or legality of the order of the Commissioners on a return to a *mandamus*; that, so long as it was not brought up by *certiorari*, it was to be obeyed. As, however, it was urged that the order was open to objection, the Court abstained from giving judgment upon the *mandamus* at that time, but allowed

the case to stand over until the defendants had had an opportunity of questioning the validity of the order.

The defendants accordingly obtained a rule *nisi* for a *certiorari* to remove the order into this Court, against which the Commissioners appeared to show cause, but the rule, not being supported, was discharged with costs, and the Court thereupon granted a peremptory *mandamus*.

GUARDIANS.

*Incomplete Board.**

Q. v. The Overseers of Todmorden and Walsden. 1 A. & E. (n. s.) 185 : S. C. 4 P. & D. 553 : 10 L. J. R. (n. s.) M. C. 65 : S. C. in error : 11 L. J. R. (n. s.) M. C. 129.

A WRIT of *mandamus* issued to the overseers of the township of Todmorden and Walsden, in the Todmorden Union, recited that these townships, with others, formed a part of the Todmorden Union ; that the Guardians of that Union required the overseers of these townships to pay certain contributions, and that they had refused to do so. It then commanded them to pay these contributions to the Treasurer of the Union. The overseers returned that the Union, when formed, comprised, among others, the township of Langfield ; that 18 Guardians were to be elected for the Union, two of whom were to be elected for Langfield, but that no Guardian was ever elected for that place ; consequently, there had never been a legal Board of Guardians, and the orders for payment were void in law. To this return it was pleaded, that the order forming the Union was dated January 28, 1837, and that on the 15th of February more than three Guardians were duly elected ; that due notice was given to the inhabitants of Langfield, but they failed to elect. Two following annual elections were set forth, at which Guardians were duly elected, except for Langfield, and it was alleged that the Guardians so elected at their several elections had acted continually for their times of office.

* See 5 & 6 Vict. c. 57, § 12.

It was argued, in support of the writ, that it was not necessary that the full number of Guardians should be elected before the body could act at all. Every parish has the power of electing its proper number of Guardians; but if it do not wish to do so, the machinery of the Statute cannot be stopped by its refusal. Supposing any question could have been made as to the insufficiency of the first Board, the subsequent elections were valid by virtue of the 38th section of the 4 and 5 Will. IV. c. 76.

Against the writ it was contended, that the Board was never legally constituted. The Commissioners directed a Board of 18 to be formed, and no board not corresponding therewith can have authority. Section 38 requires that one or more Guardians shall be *elected* for each parish, and it is not enough that one or more shall be *eligible*. The order of the Commissioners directing the election should have been followed by the election in fact of the requisite number of Guardians. There is nothing in the Act which gives validity to the acts of an incomplete Board where the first election was not complete.

Lord Denman, C. J.— “ * * * The proviso in 4 and 5
“ Will. IV. c. 76, § 38, directing that one or more Guardians
“ shall be elected for each parish, must mean that one or more
“ shall be made eligible by the order of the Commissioners.
“ Nothing in that clause attaches to the non-election in fact
“ such consequences as the defendants contend for. This I say
“ as the expression of my own opinion. I do not, however,
“ found my judgment upon this point, which indeed is not
“ without difficulty. But the later words of section 38 cure
“ the defect, even admitting it to exist. For there has been an
“ annual election subsequent to the first; and there is an express
“ provision that, if at such subsequent election the full number
“ of Guardians shall not be elected, the other or remaining
“ members may act as if the number were complete. This is
“ conclusive, unless the words ‘ subsequent election of Guardians’
“ apply only to the case where there has been a first election at
“ which the full number of Guardians has been appointed. It

“ seems to me that this would be an extravagant interpretation,
 “ and therefore that the Board was competent to make, and the
 “ defendants bound to obey, the orders.”

Littledale, J.—“ The earlier part of section 38 is not so dis-
 “ tinctly worded as might be wished, but the latter part removes
 “ the difficulty. * * * If at the original election the full num-
 “ ber had been elected, and any had refused to act, the diffi-
 “ culty, supposing there were one, would clearly have been
 “ removed by the second election; and the Board elected at the
 “ second election might have acted, though incomplete in num-
 “ ber. * * *

Patteson, J.—“ * * * The proviso that one or more Guar-
 “ dians shall be elected for each parish, coming after the pro-
 “ viso which refers entirely to the power of the Commissioners,
 “ applies to that power only. * * * It is argued that here,
 “ since there was no completion of the number before the sub-
 “ sequent election, there could be no Board at all, and therefore
 “ no good subsequent election. I do not know that I could go
 “ so far even as to the first election; but at any rate can we
 “ say that what was done in 1838 was not a subsequent elec-
 “ tion? And if it was, this is the very case provided for.”

Coleridge, J.—“ * * * The Commissioners are to deter-
 “ mine the number to be elected in each Union; that must
 “ mean the number eligible. The proviso following must
 “ therefore mean that the Commissioners are to provide for the
 “ election of one or more Guardians in each parish. That con-
 “ dition, then, has been here performed, and may be left out of
 “ consideration. Then you have simply a direction by the
 “ Commissioners, which has not been fulfilled. If there were
 “ nothing more in the Statute, I should think no one could
 “ doubt that an imperfect number might act. * * * Supposing
 “ the first election incomplete, the subsequent election clearly
 “ gives an imperfect Board power to act.”

Judgment for the Crown.

A writ of error was brought by the defendants upon this judgment, which was argued in the Court of Exchequer Cham-

ber, on behalf of the defendants after last Trinity term. The Court did not call upon the counsel for the prosecution to argue the case; but

Tindal, C. J., delivered judgment as follows:—"The whole
" question arises upon the proper construction to be put
" upon the 38th section of the 4 and 5 Will. IV. c. 76; and
" the first objection that has been raised against the judgment
" which has been given by the Court of Queen's Bench is, that
" the words which occur in that section—"provided always that
" one or more Guardians shall be elected for each parish in-
" cluded in such Union"—are words that import a condition;
" and that, importing such condition, inasmuch as there was
" not for one of those parishes a Guardian who was elected at
" the first election, this last election is void.

" It appears to us that these words are no more than direc-
" tory. They are a direction which is intended to govern the
" discretion of the parties who elect, that there shall be one or
" more Guardians for each parish included in the Union, and
" not by any means to be interpreted with the strictness of a
" condition or limitation.

" But supposing that not to be a proper construction; ad-
" mitting, for the purpose of the argument, that those words
" are conditional,—we think there are subsequent provisions in
" this clause which will get rid of the difficulty secondly made
" in the course of the argument. It was alleged that, unless
" there is a first Board properly constituted within the meaning
" of the Statute, no second or subsequent Board can be so con-
" stituted. The argument was, that by the 38th section the
" Justices within a certain jurisdiction, between the periods of
" the first, and the next and any subsequent election, in case
" the full number of Guardians shall not be duly elected, shall
" take upon themselves the administration of the act. Now it
" seems to us that this provision is confined to the first election,
" and that it does not extend to the second or subsequent election,
" unless there is a difficulty arising from a delay or irregularity
" in the subsequent elections. Then, indeed, they are Guar-

“dians *ex officio*, and they may act. But that is not the complaint here. There is no doubt that at the second and subsequent elections there was one Guardian appointed for each parish.* Then, that being the case, the case of the full number of Guardians not having been chosen at the second or subsequent election is provided for by that part of the same section which authorizes the overseers or remaining members of the Board to continue to act as if the number of the Board was complete.

“We therefore think that, the objection taken applying itself to the first election only, and not to a second or subsequent election, there has been a good election *de facto*, and upon that ground we think that the judgment of the Court of Queen’s Bench ought to be affirmed. * * *

“I am not certain whether there was one Guardian at each of the subsequent elections. However, that difficulty is got over by (supposing the number was incomplete) those who were chosen acting.”

Judgment affirmed.

Validity of the Election of Guardians cannot be questioned by a general denial.

Q. v. The Governors of the Poor of St. Andrew, Holborn, and St. George the Martyr. 10 A. & E. 737.

THE Guardians of the Poor of the Holborn Union issued an order to the Governors and Directors of the Poor of the above-named parishes, who are appointed under a local Act, for a contribution to the expenses of the Union, and, the same having been disobeyed, a writ of *mandamus* was obtained against them to enforce the order. The defendants returned, in general terms, that the Guardians were not duly elected, and therefore they refused to obey it.

A rule had been obtained for quashing this return on the ground of its insufficiency, and for a peremptory *mandamus*.

* See the end of the Judgment.

Cause was shown, and the Court took time to deliberate, and Lord Denman, C. J., afterwards delivered the judgment of the Court.

“ * * * We have been called upon to quash this return on
 “ motion, and award a peremptory *mandamus* on the ground
 “ that it is manifestly bad and illusory. On the other hand,
 “ the return is contended for as good by reference to proceed-
 “ ings on *mandamus* to corporate officers bound to admit by
 “ swearing in persons elected, where ‘not duly elected’ has been
 “ in several cases, particularly in those most lately decided,
 “ holden to be a good return. But we think the distinction
 “ clear; the person elected has no right to compel admission,
 “ without showing a good title *in omnibus*, and must be pre-
 “ pared to prove it. If his election, *de facto* made, is bad
 “ in law for any defect, it would be wrong to admit him.
 “ But in this case the Commissioners have power to form
 “ Unions, elections of Boards are to be made as the Act directs.
 “ This Board is in full exercise of all its authority; moneys
 “ collected for the use of the poor are to be paid according to
 “ orders issued by the Commissioners, *and their orders have*
 “ *the force of law, unless, and until, they are set aside by this*
 “ *Court*. Here they can do the thing required, and those who
 “ obey their orders will incur no responsibility by doing so.
 “ If there really were any doubt whether the existing Guar-
 “ dians are duly appointed, it must arise from some defect
 “ existing in point of fact, which ought to be distinctly set
 “ forth by any one who disputes their *prima facie* power. If
 “ any such fact had been returned to the writ, we might have
 “ exercised our judgment whether, if established, it would have
 “ defeated the Commissioners’ authority, but the statement
 “ that for some undisclosed reason the parties charged with a
 “ plain duty refused to perform it, because they choose to say
 “ in general terms that those to whom they are bound are not
 “ duly appointed to their office, is wholly insufficient. A pe-
 “ remptory *mandamus* must go.”

Rule absolute.

Liability of individual Guardians for Misapplication of the Funds.

Attorney General *v.* Compton and others, and Randall. 1 Yo. & Coll., New Chancery Cases, 418.

THE parish of St. Marylebone, in respect to the relief and maintenance of the poor, is governed by Directors and Guardians of the Poor elected under a local Act, the 35 Geo. III., c. 73, which Act authorises the vestrymen of the parish to raise money by assessment for the maintenance of the poor, and to pay to their Treasurer such sums as the Directors and Guardians require for such purpose.

The parish has adopted the 1 & 2 Will. IV., c. 60, regulating vestries, which Statute contains a provision for the auditing of parochial accounts.

In 1837, Dr. Firth, the house-surgeon of the workhouse and infirmary, commenced actions of libel and slander against Dr. Glendinning, the honorary physician of the parish infirmary, and Dr. Boyd, the house-surgeon, for certain charges made by them in respect of the treatment of a female pauper, through which Dr. Firth was dismissed. Application was made to the Guardians and Directors for protection, but was refused, because the Guardians and Directors considered that they could not then legally undertake their defence.

Dr. Glendinning and Dr. Boyd, in their defence, employed Messrs. Hill and Randall, the solicitors of the Directors and Guardians, and in February, 1839, Dr. Glendinning succeeded on the trial of his action, and that against Dr. Boyd was abandoned. No costs were recovered from Dr. Firth, and the bill against Dr. Glendinning amounted to 291*l.* 19*s.* 8*d.*, and that against Dr. Boyd to 54*l.* 17*s.*

In September, 1839, application was again made to the Guardians for payment of these sums. A remonstrance was presented by eighty-five ratepayers of the parish against this allowance; but a majority of twelve of the Guardians against five, voted that the bills of costs should be paid out of the poor-rates, and

ordered checks to be drawn upon the Treasurer for the payments, which were accordingly drawn and handed over to Randall.

In December, 1840, an information in the name of the Attorney-General, at the relation of two rated inhabitants of the parish, was filed against the twelve Guardians who formed the majority, and Mr. Randall, who received the money charged, charging the former with a breach of trust, and the latter with being a party thereto; and requiring them to repay the same with legal interest and costs.

To this information the Governors and Directors stated that they were justified by the sanction of the Vestry and by the auditors, and submitted that they were not personally responsible, and ought not to have been made parties to the suit.

The defendant Randall insisted that the money was applicable, not only to the maintenance of the poor, but to the general purposes of expenditure incident to a workhouse.

In support of the information it was argued, that, however improper the actions might be, the parties could not be defended at the cost of the poor-rates.

The Directors and Guardians contended that, the parish accounts having been passed and allowed by the Auditors under the 1 & 2 Will. IV., c. 60, the matter was concluded, or that the relators might have appealed against the accounts, or have indicted the Directors and Guardians, but that the application here was made too late. Supposing however that this information could be properly filed, there was no real ground of complaint. The Guardians had only relieved their officers from costs incurred by them in the discharge of the duties of their offices.

The Vice-Chancellor Bruce observed,—“ Is it not a large
“ proposition to say, that, because an action is brought frivo-
“ lously and vexatiously against a party for doing his duty, his
“ employer is to indemnify him? Where is the proposition to
“ end? It would be dangerous in private life, and destructive
“ of public funds.”

It was then urged that this Court had no jurisdiction to interfere, as the public parochial rates were not a charitable fund; and it was also argued that the form of the proceeding was wrong, and that instead of an information there ought to have been an information and bill, in which case some individuals would have been the plaintiffs.

For the defendant Randall it was urged that the Court ought not to call in question proceedings which had been taken honestly, if not legally; and that he had simply taken the payment from his clients in the manner which they had provided, and had never claimed it from the Directors and Guardians.

The Vice-Chancellor Bruce.—" * * * These sums were
" part of a public fund in the hands of certain public officers, de-
" voted to certain public purposes within a certain district, to
" which purposes it was the duty of those officers to apply them.
" They were, in a sense, trustees for that purpose; and if it was
" held that, upon a misapplication of moneys so circumstanced,
" it was not competent for a Court of Equity to interfere, I am
" not aware what civil remedy there would be in such a case.
" This is not a question of the legality of a rate; it is a ques-
" tion of the due application of moneys, the produce probably
" in part, but not wholly, of rates: but if it were wholly the
" produce of rates it would, in substance, make no difference
" for the present purpose. I say, that if, the money having
" thus legally come to the hands of these trustees, it were not
" competent to a Court of Equity to inquire into the due appli-
" cation of the money, there would be an absence of civil
" remedy; for I have yet to learn the form of action in which a
" remedy for such a misapplication, producing the recovery of
" the money, could be obtained."

His Honour then decided that the proceeding by information alone was correct, and that the proceedings were commenced in time.

" It is then argued," he continued, " that, however inaccurate
" and undue the application of this fund may have been, yet on
" the principle supposed to be recognised in the Attorney-General

“ *v. The Corporation of Exeter*, 2 Russ. 54, as there was no
“ moral turpitude or intention to do wrong, this Court ought
“ not to interfere. * * * That case, I apprehend, has no refer-
“ ence to a dispute of recent origin, where a trustee, from what-
“ ever motive, chooses knowingly to commit a breach of trust,
“ warned that it is a breach of trust, and that it is so considered
“ and intended to be so dealt with by those who bring it under
“ the attention of the trustees.

“ It has been argued also, that, as the twelve gentlemen who
“ compose the majority who directed the application of this
“ money were members of a body, and as the act when done
“ was the act of the body, and not of the majority only, there-
“ fore the majority are not liable to be sued, and not justly to
“ be complained of in consequence of that act. Such, however,
“ I apprehend, is not the rule of a Court of Equity in respect
“ to the administration of property devoted to public purposes.
“ Treating this Board of Guardians as a corporation; rejecting,
“ for the sake of argument, all notion of dealing with them as
“ individuals not incorporated, the rule of this Court I appre-
“ hend is, that, *where it finds members of a corporation holding*
“ *property in trust dealing with or directing that trust-property*
“ *in a manner amounting to a breach of trust, it will hold*
“ *them individually responsible for the application of the funds;*
“ and as the present application of these funds was the act of
“ these twelve gentlemen against the opinion of the minority,
“ and as each one of these was an actor in the breach of trust
“ complained of, I apprehend that the suit is properly brought
“ against them. It is with equal propriety brought against
“ Mr. Randall, who received the money in question direct from
“ the trustees, knowing that it was a trust-fund, and knowing
“ that it was to be applied to an improper purpose. * * *

“ I am disposed to send a case to a Court of Law, both on
“ the original liability of the Board of Guardians, the original
“ propriety of the payment, and the effect of the allowance of
“ the accounts by the auditors.”

This was declined by the defendants;

And the Vice-Chancellor thereupon dismissed the information, directing the defendants to pay the costs of the evidence on both sides, as between party and party, the relators to have their costs as between solicitor and client, out of the two sums in question, the residue to be paid by the defendant Randall to the treasurer.

OVERSEERS.

Overseers, appointment of,—District not requiring separate Overseers.

Q. v. Marriott and another. 12 A. & E. 35: S. C. 3 P. & D. 465.

Price v. Quarrell. 12 A. & E. 784: S. C. 11 L. J. R. (n. s.) M. C. 129.

THE parish of St. Andrew, Pershore, extends over the places of Wick, Bricklehampton, Pinvin, Besford, and Defford, which are chapelries in that parish. Each has its own chapel, maintains its own poor separately, having separate parish officers and overseers, and for parish purposes is totally unconnected with the rest of the parish of St. Andrew. The parish also extends over a part of the market-town of Pershore, and likewise the hamlet of Pensham. This portion and the hamlet have immemorially formed together, and been treated as, one parish for the relief of the poor. The town of Pershore contains about 610 acres, and in 1831 had a population of 964 persons; and the hamlet contains about 704 acres, and the population was about 118 persons. For the last six or seven years previous to 1838, two overseers had been annually appointed for Pensham, but previously one only had been appointed. It has no church or chapel, but the inhabitants attend the church of St. Andrew, which is their parish church, and they join with the inhabitants of St. Andrew in appointing one of the churchwardens. There was always a workhouse in the St. Andrew part of the parish, which was used for the poor of the two parts indiscriminately. The expenses of relieving the poor of this district have been borne in the proportion of two-thirds by the Pershore part, and the other part by Pens-

ham. The expenses were entered in one account, and the same was ultimately apportioned. The rates were ordered at Vestry meetings, at which the paymasters of each part attended, and no question as to settlement had ever arisen in reference to the two parts. The overseer chosen in Pensham had been resident there, collected the poor-rates there, relieved the poor who lived there, paid the Pensham thirds to the overseers of St. Andrew, and transacted the parochial business of the hamlet, which had its own surveyor of highways, collector of poor and church rates, and constable. The thirds were collected by a rate at such times and in such manner as was determined by the Pensham part of the parish alone, and there was no general rate for the relief of the poor for the parish including Pensham. On the formation of the Pershore Union one Guardian was returned for Pensham.

Two overseers having been appointed for the hamlet, a rule *nisi* had been obtained for a *certiorari* to bring up the order of Justices making the appointment to be quashed.

Against that rule it was urged, in the first place, that the Court would not decide the question on such a motion ;

But the Court held that it was competent for them to do so.

Secondly, that Pensham was either a township, already separately maintaining its own poor, or else entitled, under the 13 and 14 Ch. II. c. 12, § 21, to have separate overseers.

In support of the rule it was contended that the chapelries were not parts of the parish incapable of deriving the benefits of the statute of Elizabeth, but distinct ecclesiastical divisions, and that no reason existed for severing the hamlet of Pensham from the rest of the parish, if the separation of those chapelries did not render the case within the rule established in regard to townships severed from the rest of a parish. And that there was no proof of the hamlet being a separate township for the maintenance of the poor.

The Court were of opinion that no necessity was shown for the appointment of separate overseers, in regard to the extent and population of the district, and made the rule absolute for

the *certiorari*.* When the order was brought up the Court directed an issue to try certain questions of fact, which were afterwards tried between Price and another, inhabitants of Pershore, and Quarrell and another, inhabitants of Pensham. The following, among other questions, were tried:—

1. Whether St. Andrew in Pershore and the township of Pensham have from the time of the Statute of Elizabeth maintained their own poor jointly and independently of the other townships.

2. Whether the township of Pensham is a separate and distinct township in respect of the maintenance of its own poor within the meaning of the Statute 13 & 14 Ch. II. c. 12, or not.

3. Whether the township of Pensham can have the benefit of Statute 43 Eliz. c. 2.

Upon the trial a verdict was taken subject to a case in which the above-stated facts were set forth. The case being argued, the Court took time to deliberate.

Lord Denman, C. J., afterwards gave judgment.—“* * *
 “ The second question is as to the unity of St. Andrew in Pershore and Pensham, or their separation from each other, as respects the maintenance of the poor within the meaning of Statute 12 & 13 Ch. II. c. 12, § 21. We think that the evidence, both as to quantity and antiquity (which latter it is unnecessary to remark is very material in such cases), preponderates greatly in favour of their identity. * * * The case finds that for forty years before 1835 there was one workhouse situate in St. Andrew’s for the use of the poor of St. Andrew’s and Pensham jointly, and that the poor had been jointly and indiscriminately relieved as far back as can be traced previously to that period, so that, in whatever manner the quota of two-thirds for one district and one-third for the other may have been raised by each (a matter which we do not consider material), the whole when raised constituted one fund for the maintenance of the poor. This has always been deemed the leading consideration in questions of this kind. * * *

* See vol. i. of this Abridgment, page 39.

“ The second question must be answered in the negative.

“ It follows that the earlier part of the first question must
 “ be answered in the affirmative, for we have already expressed
 “ our opinion that St. Andrew’s Pershore and Pensham are
 “ not separated for the maintenance of the poor ; and when we
 “ find it stated, without anything to the contrary, that each of
 “ the five townships or chapelries has maintained its own poor
 “ without ever contributing to the repairs of the church or
 “ maintenance of the poor of the parish of St. Andrew, it
 “ follows that our answer to the whole question must be in the
 “ affirmative. * * *

“ Our answer to the second and most important question
 “ applies in a great degree to the last. Generally speaking,
 “ when questions have arisen as to whether any district can
 “ have the benefit of the Statute of Elizabeth, a leading prin-
 “ ciple has been the state of things before. If the district *has*
 “ *had* the benefit it has always (except there has been some
 “ important change in the state of things) been considered an
 “ important reason for its continuing to have it. * * * With-
 “ out therefore entering into the question (which it is not at all
 “ necessary to do) how far a district may be *now* subdivided
 “ for the purposes of the poor, our opinion is that Pensham
 “ and Pershore have jointly maintained their poor, and that
 “ nothing appears in the case to show that they cannot con-
 “ tinue to do so. Our answer to this question is in the affirm-
 “ ative.”

The order appointing the overseers for Pensham was subse-
 quently quashed.

District requiring separate Overseers.

Q. v. Justices of Worcestershire. 12 A. & E. 28 : S. C. 3 P. & D. 465 :
 9 L. J. R. (n. s.) M. C. 81.

THE parish of Tardebig consists of four townships or hamlets—
Tutnall and *Cobley* in Warwickshire ; *Redditch*, *Webheath*, and
Bentley Pauncefoot in Worcestershire. The parish church is
 partly in one county and partly in the other, and there are two

churchwardens for the whole parish. Tutnall and Cobley has always had distinct overseers, and has for all purposes relating to the poor acted as a separate parish; it has had its separate constable and other similar officers. The four hamlets have never interfered with each other in the choice of any officers. Until 1832 one person out of each of the three Worcestershire townships was named overseer by the inhabitants thereof, and was appointed by the Magistrates an overseer of the parish of Tardebig, in Worcestershire. Each collected the rates in his own district, and kept his own accounts, but they were afterwards entered into one book, and passed jointly. There was a workhouse in Webheath, where the poor of the three townships were maintained at their joint expense. Since 1832 four overseers have been appointed for the Worcestershire part of the parish, two out of Redditch, and one from each of the other townships. They have separate collectors and assessors of taxes, and surveyors of the highways; one constable is appointed for Redditch and Webheath, and one for Bentley Paucefoot. For all purposes, except contributing jointly to the relief of the poor and the repairs of the church, Bentley Paucefoot was distinct from and independent of the other parts of the parish. All the townships are now incorporated in the Bromsgrove Union.

An application had been made to the Justices on behalf of the township of Bentley Paucefoot for the appointment of separate overseers, which had been refused; and a rule *nisi* had been obtained for a *mandamus* to the Justices to compel the appointment of the overseers; against which it was argued—

That the cases which decided that separate overseers should be appointed where one of several townships in a parish already possessed separate overseers were not properly decided, as the township ought in such cases as the present to be considered as a separate parish. Here Tutnall and Cobley is in effect a separate parish, not having been reserved from the rest of the parish under the 13 & 14 Ch. II. c. 12. But if these cases were correctly decided, as the granting of the *mandamus* to enforce the provision of that Statute is discretionary with the

Court; and as the principle of that Statute, namely the subdivision of districts, is at variance with that of the New Poor Law Act (4 & 5 Will. IV. c. 76), which provides for the union of districts, the Court will give effect to the latter by refusing the *mandamus*.

In support of the rule the cases of *Rex v. Sir Watts Horton*, 3 T. R. 746, and *Rex v. Justices of Salop*, 3 B. and Ad. 910, were relied on, and it was argued that the question was, whether the parish of Tardebig, in its present condition, can have the benefit of the Statute 43 Eliz. c. 2. If it cannot, the Court have no discretion under the Statute 13 & 14 Ch. II. c. 12. If one township has been immemorially taken out of the parish for the purpose of managing its poor by separate overseers, the other townships cannot reap the benefit of the Statute of Elizabeth by maintaining the poor of the parish as one parish, and each may claim to have separate overseers. Here Bentley Pauncefoot has always had a right to be separated, and the gradual alteration of circumstances in a parish consisting of various divisions, agricultural and mercantile, may call for such an application now, though it might formerly have been dispensed with.

Lord Denman, C. J.—" * * * We are clearly bound by " the determination of the Court in *Rex v. Sir W. Horton*, and " *Rex v. the Justices of Salop*. * * * The Statute 4 & 5 " Will. IV. c. 76, is relied upon as showing that the legisla- " ture has now abandoned the notion that, with a view to the " maintenance of the poor, parishes ought not to be very large, " a notion which has been contested in some cases since the " Statute of Charles. But before the new Act we had got rid " of the opinion that the Statute of Charles was to be construed " with reference to any supposed policy, and had considered " the rule to be that we must apply the Statute as well as we " could to each particular case on its own state of facts. It is " true that on the facts when shown we must exercise a dis- " cretion, but in the two cases cited the Court has put this " clear construction on the Act, that, where one township has

“ been severed from the rest of the parish, as to the maintenance of the poor, the parish cannot reap the benefit of Statute 43 Eliz. c. 2, and other townships in the parish may claim to be separated also.”

Patteson, J.—“ * * * The new Act, though contradictory in principle to Statute 13 and 14 Ch. II. c. 12, § 21, as to the size of districts, has not repealed it, nor does it alter the former law as to the appointment of overseers, and the making and collecting of rates.”

Rule absolute.

Appointment of Overseers.

Q. v. Justices of Staffordshire. 10 L. J. R. (n. s.) M. C. 167.

Q. v. Sneyd and another. 9 D. P. C., 1001.

Two justices of the county of Stafford, Rev. Mr. Sneyd and Mr. Gaunt, held a Special Session at Leek on the 31st March, 1841, for the appointment of overseers. Two lists were presented for the township of Onecote, and the justices, not agreeing in the choice, adjourned the appointments for this and some other townships for a fortnight, to April 14th. Mr. Gaunt then quitted the meeting. Mr. Sneyd, being informed that such adjournment would not be legal, gave verbal notice to the parties to attend on the 1st of April. On that day he and another county justice made an appointment of overseers. On the 14th of April, Mr. Sneyd, Mr. Gaunt, and another justice, met, and the two latter appointed another set of overseers. Both sets afterwards acted.

A rule *nisi* having been obtained for a *certiorari*, to bring up the appointment made on the 14th, cause was shown against it, and it was contended that, the justices who had jurisdiction over the matter on the 31st of March, having adjourned the case to the 14th of April, no other justice could interfere with it. Hence the appointment made on the 1st of April was not lawful, and the *certiorari* ought not to issue. The 54 Geo. III. c. 91, which directs the appointment of overseers to take place within fourteen days after March 25th, is directory only, and there was therefore no objection to the adjournment.

In support of the rule it was argued, that the appointment by two justices on the 1st of April was valid, and therefore the subsequent appointment was not legal, the office being then filled. If the appointment made on the 1st was bad, so also was that on the 14th, and the Court ought to quash both.

Coleridge, J.— “ * * In the first place, irrespective of the
“ appointment made on the 1st of April, it is insisted that the
“ second appointment is bad because it is made out of time.
“ That objection cannot, I think, be sustained ; for though the
“ statute says that the appointment shall be made on the 25th
“ of March, or within fourteen days after that day, there are
“ many cases where statutes have directed appointments to be
“ made within a certain time, and, not being so made, they
“ have been held good ; for the general rule of construction
“ has been, that, unless there are negative words in the Statute,
“ it is directory only. * * Therefore, in the present case,
“ though the justices may be subject to a penalty, yet, if the
“ adjournment was properly made, whether they are liable to
“ a penalty or not, the appointment on that day, though more
“ than fourteen days after the 25th of March, would be valid.
“ This leads me to the second question : whether that appoint-
“ ment can be prevented taking effect by reason of the prior
“ appointment on the 1st of April. * * But I think the prior
“ appointment was invalid. * * I think after the meeting on
“ the 31st of March the other justices had no jurisdiction over
“ the matter. Suppose they had adjourned to a day within
“ fourteen days after the 25th of March, would it have been in
“ the power of two justices to go to another place and make an
“ appointment before that time ? I think it would not, and
“ that the present is the very same case. * * The right course
“ for Mr. Sneyd would have been to communicate with his
“ brother magistrate, so as to bring themselves together again
“ within the legal time. * * * He had no right to do what
“ he did ; and as the appointment made on the 14th of April
“ was perfectly valid, the rule must be discharged.”

Rule discharged.

Churchwardens and Overseers, Election of.

Q. v. D'Oyley and others. Q. v. Hedger and others. 12 A. & E. 139 : S. C.
4 P. & D. 52, 61 : 9 L. J. R. (n. s.) M. C. 113, 117.

ON the 12th of April, 1840, notice was given by two of the parish officers of Lambeth, of a vestry meeting for the choice of churchwardens and overseers, the nomination of district overseers, and the election and choice of other parochial officers. Dr. D'Oyley, the rector of the parish, gave notice on the same day that, if a poll should be demanded and granted, the same should be held at certain times, and at the porch of the parish church. A majority of the parish officers then gave notice that they should make arrangements for taking the poll at the school-room, and should take the sense of the vestry as to a convenient and proper place for the poll.

The vestry was held on the 21st, the rector being in the chair. Two sets of churchwardens were proposed, and on a show of hands the majority was declared for one, and a poll was demanded. The rector was required to take the sense of the vestry as to the manner of holding it : this he refused to do, but granted the poll, and appointed it to take place at the time and place of which he had given notice. The polling took place accordingly, and the party who were in the minority on the show of hands were returned by a large majority. During the polling, a protest against the course pursued by the rector was presented.

With regard to the overseers, it appeared that a local Act, 50 Geo. III. c. 19, reciting that the parish of Lambeth is divided into four districts, directs that the inhabitants of each of the districts, being rated to and paying the poor-rate, shall, in vestry assembled, or the major part of them then present, nominate four persons residing within the district to serve the office of overseers of the parish ; that the vestry-clerk should make out a list of the sixteen names, and return it to the justices, who should appoint one out of the four persons nominated for each district to be one of the overseers for the parish.

The same proceedings took place upon the nomination of the overseers as on the choice of the other officers, except that a further objection was taken, that, under the local Act, no poll was to be granted, but that the nomination was to be made by the inhabitant rate-payers then present. The rector nevertheless persisted in the course which he had prescribed. At the polling the votes were taken by pluralities, according to the scale in the 59 Geo. III. c. 12. In two districts the result of the poll was the same as on the show of hands, but in the other two it was reversed. The justices determined to abide by the result of the polls.

A rule *nisi* for a *mandamus* to the rector and parish officers to convene a vestry for the choice of churchwardens, on the ground that the previous proceedings were invalid, had been obtained.

Against which it was argued, that the election had been properly held, and the office already full: that the rector was properly the chairman of the vestry, and consequently had a right to regulate the course of proceeding, and the time and manner of taking the poll; and as he had given due notice of the adjournment, there was no necessity for him to consult the vestry.

In support of the rule, it was contended that the rector was not the person who summoned the vestry meeting, and therefore his notice of the adjournment was unavailing. If he had a right to preside at this meeting, which was not held in the church, he had no power to adjourn the vestry and select the place of its adjournment against the will of the meeting itself.

A similar rule had also been obtained for a *mandamus* to the justices, to select the overseers from the lists returned on the show of hands.

Against this rule it was argued, that, though the local Act had directed that the overseers should be nominated by the inhabitants then present, such nomination could not of itself constitute an election as to restrain the ordinary right to a poll which is incident to all popular elections. And in answer to the objection that the plurality of votes was not allowable, it

was also argued that the 58 Geo. III. c. 69, § 3, has modified the local Act, and there was no usage in the parish to bring it within the exception contained in section 8.

Contrà, it was contended that the inhabitants were to nominate at the vestry the persons to be the overseers, and when the majority had been ascertained the proceedings ought to have closed. Then this was a case in which there was a mode of election prescribed by a local Act, and it was within the 8th section of the Act.

The Court took time to deliberate.

Lord Denman, C. J., afterwards delivered the judgment.

“ The proper place for the election of Churchwardens is
“ some convenient place within the precincts of the church ;
“ and the rector is the proper person to preside, as of com-
“ mon right, and as owning the freehold of the church ; and
“ the churchwardens are so far ecclesiastical officers, that the
“ rector is entitled to interfere in bringing them into exist-
“ ence. * * *

“ Assuming then that he possesses this right, the question
“ now is, what power he has by Statute, and whether he has
“ exercised his functions according to law. Statute 59 Geo.
“ III. c. 69, § 1, requires notice of the Vestry to be given, but
“ does not say who is to give it. We are of opinion that the
“ rector is the fit person : he is at the head of the parish for
“ this purpose, and in the present case he is to nominate one
“ churchwarden at the Vestry. Then the meeting being
“ held, and a show of hands taken, some one was to declare
“ on whom the nomination had fallen. Who was to do that ?
“ Not the body of the parishioners who had made the nomina-
“ tion, nor the old churchwardens, but the person presiding
“ at the Vestry, namely, the rector.

“ A poll is then demanded, and it is demandable as of right,
“ and the president of the meeting is the person to grant it. In
“ the absence of other business, the poll should be taken imme-
“ diately. If the time does not allow of that, there must be an
“ adjournment for the purpose. Then who is to direct the

“ adjournment? It is suggested that a majority of the voters
 “ should do so. But how is the majority to be ascertained in
 “ so large a constituency? and what is the situation of parties
 “ if the majority present decide against an adjournment, so as
 “ to leave no time for a considerable part of the rate-payers to
 “ vote. Setting aside the inconvenience that might arise if a
 “ majority of the parishioners could determine the point of
 “ adjournment, we think that the person who presides at the
 “ meeting is the proper individual to decide this. It is on him
 “ that it devolves both to preserve order in the meeting, and
 “ to regulate the proceedings, so as to give to all persons en-
 “ titled a reasonable opportunity of voting. He is to do the
 “ acts necessary for these purposes on his own responsibility,
 “ and subject to the being called upon to answer for his con-
 “ duct if he has done anything improperly.” * * *

The Court decided, with reference to the nomination of the overseers, that the granting of the poll was proper, and that the votes were duly taken by plurality of votes.

Rules discharged.

Duties of Overseers—as to the Burial of Deceased Paupers.

Q. v. Steward and another. 12 A. & E. 773: S. C. 4 P. & D. 349: 10 L. J. R
 (n. s.) M. C. 42.

ONE Mary Kershaw, residing in the parish of St. George, Hanover Square, was admitted as an in-patient to St. George's Hospital, in that parish, where she died. Her husband was not able, through poverty, to take her corpse away and bury it. The parish officers had been requested to do so, but had refused. A rule had been obtained for a *mandamus* to compel them to repay the costs incurred by the hospital in the burial of the body.

Against the rule it was contended that the overseers were not bound nor entitled to dispose of the parish funds for this purpose. Though every person entitled to burial may have burial in the churchyard where he dies, no obligation is cast upon the overseers to provide such burial. The Statute 43 Eliz.

c. 2, imposes no such duty upon the overseers, and the 48 Geo. III., c. 75, directs interment by the parish officers of bodies cast on the sea-shore at the expense of the county : which special provision would not have been requisite if the overseers were already liable to bury the body. The burial of the body of a person settled is not one of the purposes of relief to which the parish funds are applicable.

In support of the rule it was argued that the parish officers had been accustomed to bury the dead bodies of paupers settled in their parish, and were bound to do so, as there was no other person upon whom the duty is cast. In this case also it might be considered that the cost of the burial was relief to the husband, who was unable to bury the corpse of his wife.

The Court took time to deliberate.

Lord Denman, C. J., afterwards delivered the judgment.

* * *

“ We were unwilling at once to discharge the rule, considering how long the practice had prevailed, and been sanctioned, of burying such persons at the expense of the parish, and the general consequences of holding that such practice has no warrant in law.

“ In the argument for the rule the necessity of the case, a very large construction of the words of the 43 Eliz. c. 2, and an inference from 48 Geo. III. c. 75, for the burial of shipwrecked bodies cast on shore, were alone relied on. These all appear to us insufficient. * * * In the present case we are thrown necessarily on the Statute of Elizabeth. *The overseer is a statutable officer, dealing with a statutable fund, and accountable for its application to statutable purposes.* The language of the Statute leaves no doubt. The relief and employment of the chargeable poor are its objects ; the fund is created for them, and cannot be diverted from them unless to objects specifically engrafted on them by subsequent statutes, of which this is not one. No usage, however proper in itself, or however uninterrupted, can prevail against that which the plain construction of a statute forbids, and we

“ cannot accede to the argument that the burial of a pauper
“ receiving relief, *but not dying in a parish-house*, can be
“ brought within the objects of the statute expressed or im-
“ plied.

“ * * * Every person dying in this country, and not within
“ certain exclusions laid down by the ecclesiastical law, has a
“ right to Christian burial, and that implies the right to be
“ carried from the place where his body lies to the parish
“ cemetery. * * * We have no doubt, therefore, that the com-
“ mon law casts on some one the duty of carrying to the grave,
“ decently covered, the dead body of any person dying in such a
“ state of indigence as to leave no funds for that purpose. * * *
“ But the question is, on whom it falls? It is enough for the
“ disposal of this rule to say that it is not cast upon the over-
“ seers, when the death does not take place under the roof of
“ any parish-house, or that which under the circumstances can
“ be considered as such.

“ But the principles above laid down seem to point to an
“ important distinction. * * * It should seem that the individual
“ under whose roof a poor person dies is bound to carry the
“ body decently covered to the place of burial: he cannot keep
“ him unburied, nor do anything which prevents Christian
“ burial. He cannot, therefore, cast him out, so as to expose
“ the body to violation, or to offend the feelings or endanger the
“ health of the living; and for the same reason he cannot carry
“ him uncovered to the grave. It will probably be found,
“ therefore, that, where a pauper dies in any parish-house, poor-
“ house, or union-house, that circumstance casts on the parish
“ or union, as the case may be, the duty of burying the body;
“ not by virtue of the Statute of Elizabeth, but on the princi-
“ ples of the common law.

“ In the present case, however, the same principles would
“ rather cast the burthen on the hospital than the parish, and
“ form an additional though not a necessary reason for refusing
“ the writ.”

Rule discharged.

*Overseers' Accounts.**How to be produced to the Auditor.*

Q. v. The Overseers of the Poor of Halifax. 10 L. J. R. (n. s.) M. C. 81.

THE overseers of the parish of Halifax, in the account which they submitted to the Auditor of the Halifax Union, inserted an item for constables' expenses, 104*l.* 9*s.* 8*d.*, but refused to furnish any particulars of that sum.

A rule for a *mandamus* to them to exhibit to the Auditor a statement of the particulars of this charge was moved for.

Williams, J.—"A *mandamus* is not necessary. The Auditor has the remedy in his own hands. Unless particulars are furnished he need not allow the charge. * *"

Rule refused.

Disallowance by the Justices.

Q. v. Fouch and another. 1 G. & D. 585: S. C. 11 L. J. R. (n. s.) M. C. 1.

THE parish of Warfield, in the East-Hampstead Union, was valued under the Parochial Assessment Act, 6 & 7 Will. IV. c. 96, § 3, by a surveyor, but the parish refused to adopt his valuation. The parish officers made a new valuation upon their own responsibility, and a poor-rate on that valuation. The rate was appealed against at the Special Sessions, under the 6th section of that Act. The Justices altered the assessments in ten cases, and ordered the parties to pay their own expenses. The overseers inserted in their accounts payments to two surveyors and a solicitor, amounting in the whole to 85*l.* 8*s.* 8*d.* The Auditor allowed these payments, and the majority of the parishioners, at a vestry, sanctioned them. The Justices, however, at a Special Session, on objection, disallowed them, and the Quarter Sessions, on appeal, confirmed the disallowance, subject to a case.

Against their order it was argued, that these were items of

expense necessarily incurred by the Overseers in their official capacity. They had made the poor-rate, as they were bound to do, and could not abandon it.

Coleridge, J., observed—"Must not the right of the overseers to have their costs allowed them out of the parish funds depend on the circumstances of each particular case? and who can be so fit to decide as the Magistrates who have the whole matter before them? Your argument must go to this—that, however careless the overseers are, they are entitled to have their costs paid by the parish."

No misconduct is imputed to the parish officers; and these expenses are as fairly chargeable by them as the expenses of litigating cases of settlement.

Lord Denman, C. J.—"This is a case in which I think the Sessions have exercised a sound discretion; the question before them being whether the costs of these parish officers were to be visited upon the parish or not. I think they were not justified in casting a useless expense upon the parish. Overseers have no right to litigate every case at the expense of the parish; and it ought to be generally known and understood that, if parish officers will get into unnecessary litigation, they will not be allowed to charge their expenses to the parish. The meaning of the decision in *Rex v. The Justices of Cambridgeshire*, 2 A. & E. 370; 4 N. & M. 238,* is, that the abandonment of a rate, after allowance, will not prevent it from being still an existing rate; but although, therefore, overseers cannot so far abandon a rate as to make it void, yet they are bound to do so, under certain circumstances, as far as they can, namely, to the extent of not bringing witnesses, or incurring expenses, to support it. The only point of law upon which our opinion can be supposed to be asked is, whether the Quarter Sessions were *bound* to allow these items in their accounts, which they clearly were not."

Order confirmed.

* See vol. i. of this Abridgment, p. 77.

Q. v. Spackman and others. 1 G. & D. 619 : S. C. 11 L. J. R. (n. s.) M. C. 15.

THE Quarter Sessions made an order as follows :—“ On hearing
 “ the appeal of T. S., an inhabitant of the parish of B., against
 “ the account of C. Spackman, late one of the churchwardens,
 “ and of &c., three of the late overseers, &c., allowed by A., B.,
 “ and C., Esqs., three of his Majesty’s Justices of the Peace ;
 “ and on hearing witnesses for the appellant, &c., this Court
 “ doth order that the following charges, &c., be disallowed.”
 A rule *nisi* had been obtained for quashing this order, on the
 ground that the account did not appear to be an *annual* account,
 and the Quarter Sessions had no jurisdiction to make an order
 as to any other than the annual account.

In support of the order it was contended that previous to
 the Poor Law Amendment Act all the accounts were annual,
 and therefore no such objection as this could have arisen. But
 as that Statute, in section 47, requires a quarterly account to
 be rendered to the Guardians, Auditor, and others, it is urged
 that this may have been such a quarterly account, in which case
 the Sessions would have had no jurisdiction. But the Court
 would make every reasonable intendment in favour of the order
 of Sessions and infer that this was an annual account. Besides
 it appears that this account was allowed, in the first instance,
 by the Petty Sessions, and the Justices at the Petty Sessions
 have no power, under the 4 & 5 Will. IV. c. 76, § 47, to allow
 the quarterly account therein provided, but only to receive it.

Contrà, it was argued that the Court would not supply any
 fact by intendment to give jurisdiction.

The Court held that the order was bad for not showing the
 jurisdiction of the Quarter Sessions, as it did not appear that
 this was the *annual* account.

Coleridge, J., observed—“ It is said that the recital in the
 “ order, that the account had been previously allowed by Jus-
 “ tices, shows that it could not be the new quarterly account,
 “ as the 47th section does not authorise the Justices before
 “ whom, in default of an Auditor, the account is brought, to

“ allow it, or to do anything more than simply receive it. I
“ do not agree in this construction. I think the Justices
“ at Petty Sessions must have the same power with the Au-
“ ditor or other person for whom they are substituted, to exa-
“ mine, audit, allow, or disallow the account. This view is
“ confirmed by what is directed as to paying over the balance
“ of the account. The balance must mean the just balance
“ which is found due after examination of the account.”

Wightman, J., on the same point, said—“ If this construc-
“ tion is right, it would seem to follow that, where there is no
“ Auditor or other person appointed, the balance from the
“ overseers cannot be called for until the end of the year,
“ although, if there is such Auditor or other person appointed,
“ the balance may be called for directly. I think, therefore,
“ the construction contended for is erroneous.”

Rule absolute to quash the order.

Time of Allowance.

Q. v. Eaton and others. 9 L. J. R. (n. s.) M. C. 99.

A MANDAMUS had issued to two Justices to examine and allow the accounts of the late overseers of the parish of Fordham. It was returned that, on April 16, 1839, within fourteen days after the new overseers were appointed, the Justices duly met together, and held a special Sessions for the purpose of passing the accounts of the churchwardens and overseers, the latter of whom submitted the accounts, and the oath was administered to them. Several items being objected to, the Justices did not allow them. On the 21st of May, the rule *nisi* for the *mandamus* was obtained, and the Justices convened another special Sessions, at which all the parish officers attended, and the Justices allowed the accounts, objection being made by a rate-payer to the notice of the Sessions among other things. After the issuing of the writ the Justices convened another special Sessions; but the acting overseer having died in the interval, the surviving parish officers refused to produce their accounts, alleging that they had been already allowed.

Against the sufficiency of the return it was argued that, by the 17 Geo. II. c. 38, § 1, and the 50 Geo. III. c. 49, § 1, the Sessions at which the accounts were allowed were not held at the right time. The accounts must be allowed within fourteen days after the appointment of the new overseers.

Pattison, J.—"The accounts must be submitted within fourteen days, and the Act proceeds to say that the Justices shall examine them and signify their allowance, but it does not say that the allowance must be at the same time as the submission."

That must be implied, otherwise the Justices may delay the allowance for an indefinite time, and deprive the parties of their appeal. Supposing the Sessions after the lapse of the fourteen days to be sufficient, there was no sufficient notice of the Justices holding it.

Pattison, J.—"There is nothing in the Act which requires the Justices to give notice, nor does it appear to be necessary that the parishioners should be there."

In support of the return it was argued that the time mentioned in the Statutes was only directory.

Lord Denman, C. J.—" * * * There is nothing in the Statute respecting the allowance of overseers' accounts rendering it necessary that such allowance should take place within fourteen days after the new parish officers are appointed. It is sufficient that the Justices should do their duty in holding the Sessions within that time. Here they did so; the accounts were duly delivered; they were unable then to complete the allowance, but on the rule *nisi* for a *mandamus* issuing they immediately proceed to do so."

Judgment for the defendants.

Examination of the Accounts.

Q. v. Justices of Cambridgeshire. 8 D. P. C. 89.

WHEN the rule for the issuing of the writ of *mandamus* in the above case was argued, it was objected, on behalf of the Justices, that they were not bound to examine the accounts of the

overseers, inasmuch as the provision contained in the 50 Geo. III. c. 49, § 1, left it discretionary with the Justices to examine the accounts or not ; consequently the *mandamus* could not go to order them to *examine* the accounts.

Williams, J., said—" I do not agree to the doctrine that
 " Justices are to exercise an arbitrary and irresponsible dis-
 " cretion as to whether or not they will examine the accounts
 " of parish officers under these Acts. 'The duty is a very im-
 " portant one, and, as it manifestly appears that the defendants
 " have refused to examine, and have not examined, these ac-
 " counts, it is proper the writ should go. I am of opinion that,
 " when Justices are properly required by rated inhabitants
 " to examine into the accounts of parish officers under these
 " Statutes, they ought to do so ; and if they refuse to do so, and
 " give no valid reason for that refusal, this Court will compel
 " them to enter on that examination."

Rule absolute.

Relieving Officer's Misapplication of Money.

Carpenter v. Mason and others. 12 A. & E. 629 : S. C. 4 P. & D. 439 :
 10 L. J. R. (n. s.) M. C. 1.

TRESPASS for assault and imprisonment. The plaintiff was a relieving officer of the Mansfield Union, who had been convicted in a penalty under the 4 & 5 Will. IV. c. 76, § 97, for *having misapplied moneys* belonging to the parish of Sutton in Ashfield, within the Union, and, not having paid the penalty, was committed to prison. The Judge at the trial held that the conviction was bad, as it did not allege that the misapplication was " wilful," and directed a verdict for the plaintiff.

It was moved to enter a nonsuit. The section referred to imposes a penalty upon any paid officer who shall purloin, embezzle, or *wilfully waste or misapply* any of the moneys, &c., belonging to the parish. It was not necessary to allege that the misapplication was *wilful*, as the misapplication which is *careless* seems to be punishable upon principle and upon the words of the section.

Lord Denman, C. J.—"The word *wilfully* is connected with "*misapply*. The misapplication, therefore, unless wilful, is "not punishable."

Rule refused.

Collector's Bond.

Webb v. James and others. 7 M. & W. 279: S. C. 9 D. P. C. 314.

10 L. J. R. (n. s.) Exch. 89.

DEBT on a bond given by a Collector of Paving and Lighting Rates under a local Act, and his sureties, which, reciting the appointment of the former as collector of the rates due and payable under and by virtue of the Act, was conditioned for the collection of all such rates as he should be directed to demand and obtain by virtue of his office, and for delivering a true account of, and paying to the Treasurer of the Commissioners, all moneys received by him by virtue and for the purposes of the said Act. To this it was pleaded, that during the continuance of the appointment no rate was made or in any way existed which the collector could legally or according to law collect or get in, or could legally or according to law demand or obtain by virtue of his said office; and that he did not at any time during the continuance of his said appointment legally receive any money by virtue or for the purposes of the said Act, or relative to the collectorship of the said rates.

It was contended that this plea was insufficient; that the collector had no right, after receiving money on account of the rate, to refuse to pay it over on the ground that there was some irregularity in the rate which rendered the rate open to objection on the part of the rate-payers.

Contrà it was argued, that the condition of the bond was confined to the collection of the rates due and payable under and by virtue of the Act; and therefore the sureties were not responsible for any neglect on the part of the collector to pay over moneys collected on an irregular rate: that he might be personally responsible for such money to the Commissioners, or to the parties who had paid the rate, but his sureties were not liable on the bond.

The Court held that the plea was a sufficient answer to the action, as the condition must be confined to moneys received by the collector as such in pursuance of the Act, and, consequently, that the sureties were not responsible in respect of moneys collected under an irregular or illegal rate.

Judgment for the defendants.

PAROCHIAL PROPERTY.

Whether in the Guardians or the Overseers.

Doe dem. Norton, and others, v. Webster. 12 A. & E. 442 : S. C. 4 P. & D. 270 : 9 L. J. R. (n. s.) Q. B. 373.

EJECTMENT for lands in Northamptonshire on a demise by the churchwardens and overseers of the parish of Bugbrooke. It appeared that certain premises had been sold under the 5 & 6 Will. IV. c. 69, § 3, and bought by the defendant. They were subsequently conveyed by the Guardians of the Northampton Union, in which that parish is comprised, and the parish officers, with the consent of the Poor Law Commissioners. A dispute arose as to the parcels actually conveyed, and the defendant retained possession of a part which the parish officers alleged had not been sold. The ejectment was brought to recover it. On the trial various points arose; and it was objected among other things that the legal estate in the premises was transferred by the recent Statutes from the parish officers to the Guardians of the Union. The Judge overruled this objection; but it was renewed in the Court of Queen's Bench, and a rule *nisi* for entering a nonsuit granted.

Against the rule it was contended, that neither 4 & 5 Will. IV. c. 76, § 21, nor 5 & 6 Will. IV. c. 69, § 3, vests the parish property in the Guardians of the Union. They only require that the functions of the parish officers shall be exercised under the control of the Commissioners, and give the Guardians a power of disposing of parish property. There is nothing

which shows an intention to take the legal estate out of the parish officers, in whom it is vested under 59 Geo. III. c. 12, § 17.

In support of the rule it was argued, that the Guardians are empowered to sell and dispose of the property, and it can hardly have been intended that they should convey property not their own. They may exclude the overseers from the workhouse; and yet it is contended that these latter can demise it so as to maintain an ejectment.

Lord Denman, C. J.— “ * * * With respect to the effect
“ of the late Statutes on the estate of the overseers, the lan-
“ guage of the clauses referred to is certainly very large, but
“ not sufficient to divest the property out of the parish officers.
“ The Statute 5 & 6 Will. IV. c. 69, confers upon the Guar-
“ dians very extensive powers over the parish property, but
“ they are consistent with the continuance of the legal estate in
“ other persons. * * * ”

Pattison, J.— “ * * * It is not credible that the legisla-
“ ture should have omitted to transfer to the Guardians the
“ legal estate in the parish property in express terms, if any
“ alteration in this respect had been intended. If the Guar-
“ dians should experience any obstruction from the overseers
“ in the exercise of their powers, they may resort to a Court of
“ Equity, or other proceedings, for the purpose of compelling
“ submission.”

Rule absolute for a new trial on other grounds.

Worge and others v. Relfe. 11 L. J. R. (n. s.) M. C. 125.

TRESPASS for breaking and entering certain closes belonging to the plaintiffs, as churchwardens and overseers of the parish of Battle. Pleas denying that the closes belonged to the plaintiffs as such churchwardens and overseers, or to the parish.

It appeared on the trial, that the parish had purchased the premises of a party who had only a leasehold interest, which expired in 1811, but continued to hold them long after his lease

expired, and paid rent to the parish, the last time being in 1828. He quitted possession ; and his son, after his death, having sold the property to the defendant, twice entered upon the premises, and was removed summarily by the Justices, under whose warrant the possession was delivered to the agent of the Guardians of the Battle Union, in which the parish is comprised. It was contended that the churchwardens and overseers had no title to the premises, as they were not a corporate body before 1819, and their title by adverse holding could not therefore be complete until 1839, before which time the Union was formed, and the legal estate was acquired by the Guardians of the Union by virtue of the 5 & 6 Will. IV. c. 69. The verdict passed for the plaintiffs.

A rule *nisi* for a new trial, or a nonsuit, had been obtained, against which it was argued, that, as the action was not brought until 1841, the parish officers had at that time fully completed their title. Then Doe *dem.* Norton *v.* Webster, *ante* (p. 43), established that the property was not taken out of the parish officers by the Statutes referred to.

In support of the rule, the argument urged on the trial was renewed, and the words of the 7th section of the 5 & 6 Will. IV., c. 69, were referred to, which empowers the Guardians of the poor of every Union, and of every parish placed under a Board of Guardians, to accept, take, and hold for the benefit of such Union or parish, any buildings, lands, &c.

Maule, J. observed—"That this means only that the Guardians of a Union may take for the benefit of the Union, and the Guardians of a parish placed under the control of a Board of Guardians, but not incorporated into a Union, may take for the benefit of a parish. But there is nothing in the Statute to show that the churchwardens and overseers of a parish cease to be a corporation capable of acquiring land."

It was then argued that the plaintiffs had not shown a possession in themselves, as the property was delivered to the agent of the Board of Guardians.

Maule, J.—"The Guardians had the management of the property for the churchwardens and overseers, and had a

“right to complain of the trespass to obtain possession of the land, but when obtained it enured, according to the title, to the benefit of the parish.”

The Court held that this was the proper answer to this objection, and that the case of *Doe v. Webster* decided that the legal estate was not taken out of the churchwardens and overseers.

Rule discharged.

How held by the Parish Officers.

Smith v. Adkins and another. 8 M. & W. 362 : S. C. 11. L. J. R. (n. s.)
Exch. 83.

To a declaration of trespass, the defendants pleaded that the Marquis of Hertford, on the 1st of January, 1837, demised a dwelling-house and garden to the then churchwardens and overseers of the poor of the parish of Harrow, to hold the same to the then churchwardens and overseers, and their successors, as tenants from year to year; that the said churchwardens and overseers became possessed of the same for and on behalf of the parish; and Mary Smith, a poor person, having refused to quit the occupation after notice, proceedings were taken under the 59 Geo. III. c. 12, and she was turned out of possession by the constable, in obedience to the warrant of the Justices.

To this plea there was a special demurrer, which assigned various causes of demurrer; and, among others, that the names of the persons to whom the demise was made were not set out. It was also argued, in support of the demurrer, that it did not appear that the lease to the parish officers was by deed; and as the churchwardens and overseers are, by the 59 Geo. III. c. 12, § 17, a corporation, they can only take land by a deed.

Contrà it was argued that they are not a corporation, but only a *quasi* corporate body, and therefore were capable of taking a demise of the land otherwise than by deed.

The Court took time to deliberate, and

Parke, B. afterwards delivered the judgment.—“* * * A second objection was, that the Churchwardens and Overseers

“ did not accept the demise by some instrument under a common
 “ seal. We think that the answer to this objection is, that they
 “ are not made, by the Act 59 Geo. III. c. 12, § 17, a complete
 “ body corporate, but they are only empowered ‘to accept,
 “ take, and hold in the nature of a body corporate.’ The use
 “ of these terms, and the circumstance that no corporate name
 “ is given to them, but that all actions and suits are to be in-
 “ stituted in the natural names of the individuals, with the
 “ addition of their name of office, appear to indicate the inten-
 “ tion of the legislature to provide for the due care of the paro-
 “ chial property, by vesting it in the churchwardens and
 “ overseers for the time being by what Lord Ellenborough
 “ terms a species of Parliamentary succession, without consti-
 “ tuting them a proper body corporate, with all the legal inci-
 “ dents and restrictions belonging to such a body by the com-
 “ mon law. It appears to us that the demise to the church-
 “ wardens and overseers was sufficient to vest the property in
 “ them on behalf of the parish by their assent and entry, with-
 “ out any acceptance by them, by an instrument under the
 “ common seal of the supposed corporation, as might have been
 “ necessary in the case of a proper corporation, according to the
 “ rules of the Common Law. Under this head another objec-
 “ tion is stated, namely, that the names of the then church-
 “ wardens and overseers are not named; but the grant would
 “ be good by the name of office to those individual officers,
 “ which would be a sufficient designation, though, when they
 “ sue or are sued, their individual names must be used, by the
 “ 59 Geo. III. * * *”

Judgment for the defendants.

Recovery of Parish Property, under 59 Geo. III. c. 12.

Q. v. The Justices of Middlesex. 7. D. P. C. 767.

A PARTY had occupied certain parish premises during 20 years, and during the last three had paid rent in respect thereof to the parish officers; a warrant was then granted by two Justices

to expel him. He submitted, and gave up possession to the parish. He was again let into possession, and, paying no rent, another order of Justices had been obtained under the 59 Geo. III. c. 12, § 24. A rule for a *certiorari* had been obtained to remove the order into the Court of Queen's Bench, for the purpose of its being quashed—against which cause having been shown,

Coleridge, J., said—"It appears upon these facts that the
"magistrates had no jurisdiction to make this order. They
"could have none unless the case is brought within the words
"of section 25. [His Lordship read the section.]

"It must be shown that the party here is to be considered as
"belonging to one of the classes of persons mentioned in the
"section, in order to make the jurisdiction of the magistrates
"attach.

"First of all, is the house in question a tenement or dwelling
"provided for the habitation of the poor? If it is not, then he
"has not been permitted to occupy a tenement or dwelling
"provided for the habitation of the poor. This, I think, cannot
"be taken to be a dwelling provided for the habitation of the
"poor by the parish, for it appears that rent was paid for it in
"the same manner as for any other property of the parish.
"The party does not, therefore, fall within the first of these
"descriptions. Let us then look to the second branch of the
"section. The property there mentioned must be intruded on
"in order to bring the party within the penal consequences pro-
"vided by the section. How has he unlawfully intruded him-
"self into this house? He cannot be said to have intruded
"himself, because he has been permitted to occupy. The key
"was delivered up to them by him, and he was afterwards put
"into possession of the house by the parish officers. This man
"is, therefore, the tenant of the parish; and they must take
"the ordinary course to determine the tenancy by notice in the
"usual way."

Rule absolute.

Q. v. Bolton. 1 A & E. (n. s.) 66 : S. C. 4 P. & D. 679 : 10 L. J. R. (n. s.)
M. C. 49.

AN order was made by two Justices under the 59 Geo. III., c. 12, §§ 24, 25, for the removal of one James Bolton from a parish-house belonging to Hampton Wick, and the delivery of the possession of the same to the parish officers. This order, together with the information, summons, and a statement of the evidence on which it was made, was removed into the Court of Queen's Bench.

The evidence disclosed various facts leading to the conclusion that this was a parish house, and occupied by Bolton as a pauper. A rule *nisi* was obtained to quash this order, upon affidavits which stated that this house had not been occupied by Bolton as a pauper.

Against the rule it was contended that the Court would not interfere with the decision of the Justices upon a matter within their jurisdiction, nor take upon themselves to say that the Justices had not formed a proper conclusion upon the evidence before them.

In support of the rule it was argued that it might be shown by affidavits that the Justices had not jurisdiction in the case, and that it was shown in the present instance, as it appeared, according to the affidavits, that this house was not one occupied by a parish pauper.

The Court took time to deliberate.

Lord Denman, C. J., after laying down at length the general principles which govern the Courts in the exercise of their control over orders of Justices, continued :

“ We conclude, therefore, that the inquiry before us must
“ be limited to this—whether the magistrates had jurisdiction
“ to inquire and determine, supposing the facts alleged in the
“ information to be true, for it has not been contended that
“ there was any irregularity on the face of their proceedings.
“ Now the information, and the recital of it in the magistrates’
“ return, both state that the defendant, having been permitted

“ to occupy a parish house belonging to the hamlet, had neglected to quit the same, or deliver up possession thereof to the churchwardens, &c., within one month after notice and demand, in writing, signed by, &c., and that he had been served with a summons to appear, and more than seven days after had appeared, to answer the complaint. These are all the circumstances required by the statute to found the jurisdiction: upon these it was the duty of the magistrates to proceed to inquire, and no affidavit disputes the truth of the return—that such an information was laid before the magistrates, and such summons issued and served, and that such appearance took place. The return then goes on to state the substance of the evidence adduced in support of the complaint, that the defendant was heard in answer, and that the Justices found the complaint proved. No affidavit denies that such evidence was offered, that the defendant was heard in his defence, or that such judgment was pronounced.

“ Beyond this we cannot go. The affidavits, being before us, were used on the argument, and much was said of the unreasonableness of the conclusion drawn by the magistrates, and of the hardship on the defendant if we would not review it, there being no appeal to the Sessions. We forbear to express any opinion on that which is not before us—the propriety of the conclusion drawn from the evidence by the magistrates: they, and they alone, were the competent authority to draw it; and we must not constitute ourselves into a Court of Appeal, where the statute does not make us such, because it has constituted no other. * * *

Rule discharged.

POOR-RATE.

Its Allowance.

Q. v. The Earl of Yarborough and another. 12 A. & E. 416: S. C. 3 P. & D.
491: 9 L. J. R. (n. s.) M. C. 62.

A RULE had been obtained for a *mandamus* to two Justices of Hampshire, commanding them to sign and allow a poor-rate for the parish of Brading, in the Isle of Wight. It appeared that a valuation of the parish had been made under the 6 & 7 Will. IV. c. 96, § 3, in March, 1839. The poor-rate, made in the form prescribed in section 2, and the schedule to that Act, was tendered to the Justices for allowance. Proof was offered that it was made on the net annual value of the several hereditaments rated; but it was admitted that many properties were assessed at different annual values from those in the valuation, and the Justices refused to allow the rate.

Against the rule it was argued that the Justices were right; and when it was brought to their knowledge that the rate was not made on the estimate prescribed by the 1st section of the 6 & 7 Will. IV. c. 96, as appeared by its variance from the valuation, were bound to disallow the rate. The object of section 3 must have been to render the valuation conclusive. Since this statute the duty of the magistrates is no longer merely ministerial, but judicial, so far as respects the requisites of the Act. The parish officers did not suggest that any alteration in the values had occurred since the survey and valuation, which might have justified the variation. The proper course, in case a valuation is disputed, is pointed out by section 6, namely, an appeal against the rate, on the ground of improper valuation at the Sessions.

Lord Denman, C. J.—"I believe some surprise was created
"when it was first held that the act of Justices in allowing a
"poor-rate under 43 Eliz. c. 2, was only ministerial. That,
"however, has long been acquiesced in. The new law, 6 & 7
"Will. IV. c. 96, which was passed to settle the rule of rating,

“ does not in terms make any change in this respect. It does
 “ indeed introduce an enactment, which appears so far incon-
 “ sistent with the previous law that it might seem that, if the
 “ magistrates found a rate to be in its terms contrary to the
 “ enactments in section 1, they could refuse to allow it; yet
 “ even in such a case I can hardly think that the Statute
 “ meant this. The inconvenience would be great. * * * * I
 “ do not wish to shrink from saying that the magistrates
 “ would not be justified in refusing to allow a rate on account
 “ of their differing in opinion from the overseers as to the
 “ value. Then the valuation makes no difference. It is cer-
 “ tainly convenient that the overseers should be furnished with
 “ such means of knowledge; but still they are to exercise their
 “ judgment. If the magistrates refuse to allow, there can be
 “ no appeal, and consequently no remedy. * * ”

Littledale, J.—“ * * The parish officers may do wisely to
 “ adopt the valuation, but they are not bound to do so; they
 “ may find gross mistakes in it. If the Justices refuse to allow
 “ the rate, there is no power to amend, and therefore there
 “ will be no rate. * * ”

Patteson, J.—“ * * Section 1 does not require that the rates
 “ shall be made on an estimate which shall satisfy the magis-
 “ trates. If then the parish officers make the declaration in the
 “ schedule, that the particulars are correct as far as they have
 “ been able to ascertain, according to their best endeavours,
 “ and the magistrates do not disbelieve that—it is enough,
 “ though it should ultimately turn out that the estimate is
 “ wrong. The error of the magistrates consists in supposing
 “ that the rate was to satisfy their minds, the intention being
 “ only that it should be authenticated in their presence. Then
 “ it is argued that, though there would be an exception if the
 “ value had altered since the valuation, the valuation must be
 “ binding in all other cases. But I cannot go even so far as
 “ that. * * ”

Williams, J.—“ * * * If I had not seen that in the 6th section
 “ provision is made for exercising the power which the Justices

“ have done at another period than that of allowance, I cannot
 “ say what the effect of section 1 would have been upon my
 “ opinion. But I do not see why there should be that distinct
 “ provision for exercising such a power of investigation if it
 “ was to be introduced at an earlier stage of the proceedings.
 “ So long, therefore, as the form prescribed in the 2nd section
 “ is observed, I think that the power of the magistrates in
 “ allowing the rate is merely what they had before the Act.”

Rule absolute.

Publication.

Q. v. Justices of Worcestershire. 4 P. & D. 440 : S. C. 10 L. J. R. (n. s.)
 M. C. 12.

Q. v. Marriott and others. 12 A. & E. 779.

A MANDAMUS had been moved for to compel the Justices to issue distress warrants to compel payment of a poor-rate in the parish of St. Andrew, Pershore. The objection was, that the rate had not been duly published, as the notice had been affixed on the door of the church of St. Andrew, Pershore, only, whereas there were in the parish five other chapelries, each of which had its own chapel, maintained its own poor separately, and was unconnected for parish purposes with each other, or the rest of the parish of St. Andrew.

Against the rule it was urged that the 1 Vic. c. 45, § 2, required that the notice should have been affixed on or near to the doors of *all* the churches or *chapels* within the parish or place; and therefore that the present notice should have been affixed on all the chapels in the parish.

It was argued, on the other hand, that the term *place* means any separately rateable district.

Lord Denman, C. J.—“ The recent Statute merely substitutes a written notice for the oral notice formerly required by
 “ the 17 Geo. II. c. 3, § 1, to be given *in the church*. The
 “ notice is now to be affixed to the doors of all the churches or
 “ chapels within *such parish or place*. In the *place* in question
 “ there is one church only, and notice has been given there.”

Rule absolute.

*Persons rateable as Occupiers.**Owner of a Private Box at a Theatre.*

Q. v. Churchwardens and Overseers of St. Martin-in-the-Fields. 11 L. J. R.
(n. s.) M. C. 112.

By a local Act, 10 Geo. III. c. 75, the poor-rate in the parish of St. Martin-in-the-Fields is assessable upon all persons who inhabit, hold, occupy, possess, or enjoy any land, house, shop, wharf, warehouse, or any other building, tenement, or hereditament, or any other person who by law is chargeable or assessable for the relief of the poor.

By indenture dated Feb. 21st, 1795, the proprietors of Drury-lane Theatre, for 6000*l.*, granted to T. Coutts, for 100 years, a private box at that theatre, for his own exclusive use, and a little room adjoining thereto, with a right to a free ingress and egress to the same. He took possession, and enjoyed and occupied the box until 1809, when the theatre was destroyed by fire. When the theatre was rebuilt, in compensation of his claims under the former lease, and in consideration of an additional sum of 300*l.*, a fresh term of years was granted to Mr. Coutts of another box, lobby, and small room adjoining, for 82 years, at the yearly rent of 1*d.*

Under this latter indenture the box and room have been used and enjoyed. They are placed on a level with the stage, and form a component part of the theatre, which is in the occupation and under the management of parties to whom it is let by the company of proprietors, and who have access thereto by means of internal doors, of which they keep the key. The approach from the street is by an outer door which opens to a staircase, by which persons ascend to other private boxes, and this outer door and staircase are under the control of the occupiers and managers of the theatre.

The company of proprietors are assessed for the theatre, and Miss A. B. Coutts was rated for this private box separately. The Sessions quashed the rate upon her.

In support of the order of Sessions it was argued that she

could not be considered as a person occupying rateable property, but only as a lodger.

Contrà, the express words of the local Act were relied on.

The Court took time to consider.

Lord Denman, C.J., delivered the judgment of the Court.—
 “ * * * * We are of opinion that the box in question is a
 “ *tenement* within the meaning of this Act, and that it is held
 “ and occupied by the appellant, so as to make her liable to
 “ be rated. The words are too large to admit of any other
 “ construction, and none of the cases referred to at the bar
 “ lead to any different conclusion. It is urged that the pro-
 “ prietors are rateable for the whole theatre, and that, if the
 “ appellant be also rated, the same premises will in effect be
 “ rated twice over; but this consequence by no means follows.
 “ The proprietors are rated in respect of their general posses-
 “ sion of the theatre, of which the box in question forms a very
 “ small part, the rent thereof being only 1*d.* per annum, and
 “ may fairly be considered as not taken into account in the
 “ rating; whereas the appellant is rated in respect of this par-
 “ ticular box. If, however, the consequence did follow, it
 “ would show only that the proprietors were rated too highly,
 “ not that the appellant was not rateable at all.”

Order of Sessions quashed.

Occupier of a Canal and Towing-Path.

Bruce v. Willis. 11 A. & E. 463 : S. C. 3 P. & D. 220 : 9 L. J. R. (n. s.)
 M. C. 43.

By the 10 Anne, c. 8, the proprietors of the navigation of the river Avon were empowered to make that river navigable to Bath, to make new cuts through the lands adjoining, and to set out towing-paths for men along the side of the river. Commissioners were appointed to settle disputes between the undertakers and the proprietors of the lands, and to determine the satisfaction to be paid for the lands taken, and the proportions to the parties interested, and in certain cases to summon a jury to assess the damages to the owners and occupiers of the land

for the loss they might incur. Upon payment of the sums agreed on or assessed, the undertakers were authorised to have, use, and enjoy the lands for their own proper use and benefit. By the 47 Geo. III. Sess. 2, c. 129, power was given to the proprietors of the navigation to make a towing-path for horses, and to keep the same in repair. Similar authorities as before mentioned were given for the acquisition of land for the purpose of this towing-path.

The river was made navigable under the powers conveyed by the Statute of Anne, cuts were made, and a towing-path set out for men; and under the second Statute the towing-path for horses was set out. A public footway runs along the same line as the towing-path in part, and in the remainder the land-owners and occupiers adjoining the towing-path occupy and depasture so much of the land as is not required for the towing-path, there being, for the most part, no fence between it and the adjoining fields. The towing-path passes over several bridges and culverts made and kept in repair by the proprietors of the navigation; the towing-path is used by them and such persons as are authorised by the Acts to use it only.

No conveyance had been taken by the Company for any land in the parish of Hanham, but they had paid to the owners of the land sums or annual payments in respect of the loss and injury caused by the making of the cuts and towing-paths. Two inquisitions had been taken under both Acts, by which the amount of damages had been assessed in certain cases.

The Company were assessed to the poor-rates in respect of the towing-paths, the cut, and locks, and, refusing to pay the rate, were distrained upon, and brought an action of replevin.

Against the rate it was argued that the Company were not the occupiers of the cut and locks, nor of the towing-paths. The land, having never been conveyed to the Company, remains in the original owners; the Company have acquired only a right to a limited use of it. They have an easement in the soil, enjoyed concurrently with the rights of others, and which, so

far as regards the cut, is open to the public, like the river itself. As to the towing-path, that is clearly a mere easement, of which the Company have not any exclusive possession.

In support of the rate it was contended that the effect of the Statute was to vest the land in the Company upon the adjudication of the Commissioners, without any conveyance. If not, they are the occupiers of the land, and it matters not what amount of interest they have in the soil. Then, the Company occupy the soil of the towing-path by the materials, the bridges, and the culverts, placed upon it; and their occupation is not affected by the right of others to a footway therein, or to take the herbage.

Lord Denman, C. J.— “ * * The main question is, whether under the circumstances the plaintiffs were the exclusive occupiers of land in respect of which they are rated? And I think it is clear they were such occupiers. Suppose a trespasser took possession of land and devoted it to his own purposes, and, an action being brought, the jury, on a trial, gave the proprietor damages equivalent to the full value of the land, after which the trespasser still kept possession without any conveyance. If the overseers then rated him as the occupier of the land, could he say I am not the owner of the land? And if he said so, might not the parish officers reply that it signified nothing to them whether he was the owner or not? But that is a weaker case than the present. * * Here an inquisition is taken; thirty years' purchase is awarded for lands; where there is no term in them, the whole is given to the landlord; where there are terms, a portion to the termor, and the residue to the landlord. And under this adjudication the Company take the land entirely to their own purposes. No doubt can exist at all under these circumstances. * * The reservation of a footway over the towing-path does not defeat their occupation: if it did, the greatest landowner in the country would, in many instances, not be the occupier of his own lands. The Company are the owners of the soil, though the public have some rights in it,

“ and may come upon it, paying for that liberty where the
 “ Statutes require payment.”

Littledale, J.—“ By the Statute of Anne, * * the under-
 “ takers are authorised to have, use, and enjoy the lands to
 “ and for their own proper use and benefit. That implies
 “ more than a mere easement. It is objected, that no convey-
 “ ance of the lands has been shown. * * * Where the assess-
 “ ment is made by a jury, the verdict recorded at the Sessions
 “ is a sufficient title; a conveyance would be useless. Here
 “ the compensation is ordered by the Commissioners to be
 “ made in some instances by payments at so many years’ pur-
 “ chase, in others by yearly payments for ever; and although
 “ the Statute does not in terms say that the lands shall vest on
 “ payment of a rent, I think that the purchase-money might
 “ be paid either by a gross sum, or by annual ones. * * * I
 “ think that the Company were purchasers under both Statutes,
 “ though not by voluntary sale. But it was not necessary that
 “ they should have the legal estate, for if they had been let in
 “ under a defective conveyance, or none, the land in their occu-
 “ pation was still a subject of rate. * * * ”

Williams, J.—“ * * * The Company had converted the
 “ land to their own purposes and had occupied it, and there
 “ was no doubt of its being intended by them to remain in the
 “ same situation, and not revert to its former occupiers. They
 “ have it, and are using it; even if they had had it for nothing,
 “ that makes no difference as to the rating, but * * * they are
 “ in reality purchasers. * * * I think the Company are occu-
 “ piers of the path; the use by others is consistent with their
 “ occupation, and the reservation to the adjoining landowners
 “ of a right to come upon it would have been superfluous if
 “ the soil had not passed from them to the Company. Other
 “ persons are excluded from it except for the navigation. * * ”

Coleridge, J.—“ * * * The real question is, whether the
 “ Company are the exclusive occupiers. Now, granting that
 “ the acts of user by them were ambiguous, they are at least
 “ evidence of an exclusive occupation; and when we look from

“ those acts to the Statutes an explanation is furnished. The
“ Company are authorised to take lands for the purposes of the
“ navigation, and they have proceeded to the extent of taking
“ them.”

Judgment for the defendants.

Occupier of a Cemetery.

Q. v. St. Mary Abbots, Kensington. 12 A. & E. 824 : S. C. 4 P. & D. 327 :
10 L. J. R. (n. s.) M. C. 25.

THE General Cemetery Company are by statute empowered to purchase land and lay out and enclose a cemetery, to erect a chapel and vaults, catacombs, and other buildings for burials. The capital was raised by shares, and the Company are authorised to sell the exclusive right of interment, either in perpetuity or for a limited period, in any of the vaults, &c., or the right of making a family vault, or the right of single interment in any of the vaults, or in the open cemetery, or of erecting monuments or grave-stones. The exclusive right of burial was to be conveyed by deed under the common seal of the Company. The Company are bound to keep the cemetery, chapel, and several buildings, external walls and fences, in complete repair.

The Company purchased land and erected the buildings accordingly. They prepared a portion of the ground for the purposes of a cemetery, and made catacombs and vaults, which are unproductive until disposed of under the Act, but many are annually disposed of in perpetuity. Certain portions have been annually disposed of for family graves. The purchasers of the vaults have had the keys delivered to them, after they have been closed up, and have done all requisite repairs, the Company never exercising any act of ownership in respect of them after such sales, but at each subsequent interment in the family vaults thus sold they charge various fees for the services of the minister, clerk, sexton, &c.

The Company were assessed to the poor-rate of the parish of St. Mary Abbots, Kensington, as occupiers of land and build-

ings, in 2000*l.*, which was reduced by the sessions, on appeal, to 444*l.* 18*s.*

The rate was founded on the principle that the Company were liable to be rated for the produce of the ground so sold or disposed of for family graves, and for the catacombs and vaults so sold, during each year, for the purposes of burial, after deducting therefrom all the expense of building the catacombs and vaults, and all other expenses attendant upon preparing them for use ; and also to be rated upon all the fees paid for the services of the clergyman, clerk, sexton, &c. (deducting therefrom the stipends paid by the Company to them, and all other necessary expenses upon such interments), and likewise upon all fees due on common interments, where no rights in perpetuity or for a term had been granted, and upon the herbage growing in the cemetery.

In support of the rate it was argued that the Company were the only substantial occupiers of the whole cemetery, the grantees of the vaults and catacombs having mere easements ; and that, though the profit was not annual, but casual, or arising at long intervals or irregular periods, an average annual amount of the sales and profits could be calculated.

Against the rate it was contended that the Company were not rateable in respect of the produce of the family graves, catacombs, &c , but only upon the fees paid upon all burials therein, and upon common interments, deducting the aforesaid stipends and necessary expenses, in addition to the herbage. These vaults and catacombs are unproductive to the Company till sold, and when sold cease to belong to the Company. After they are disposed of, the sale is equivalent to a conveyance of the land, and the Company cannot be considered as the occupiers. If an easement only be conveyed to the purchaser, the easement is such as to constitute the party an occupier.

Lord Denman, C. J.—"The Company are occupiers of the whole premises. The cemetery is under their control and maintenance, and they are bound to keep the whole in repair. They must be assessed upon the whole of the profits."

Littledale, J.—" * * * The power of disposing of the right of burial in perpetuity makes no difference in principle: they are still the occupiers of the whole cemetery. It does not appear that the owners of the vaults have the keys of the outer enclosure, though the Company deliver them the keys of the vaults. The purchasers have nothing but a right to a certain mode of enjoying portions of the land, from which the Company derive a profit."

Williams, J.—" * * * It is a fallacy to treat the conveyance here as a sale of the land. The Company have no power to sell any but the surplus land not used for the cemetery. By the grant they only part with the exclusive right of sepulture."

Coleridge, J.—" If the Company are in the occupation of the whole cemetery there is no difficulty, for it is unnecessary that there should be annual profits. Some facts look like an occupation by the purchasers, but they are explained by reference to the statute. * * * The land appropriated for interment cannot be sold. The sales, therefore, made under section 43 convey only a peculiar easement, and do not deprive the Company of the general occupation of the whole."

Order of Sessions quashed.

Beneficial Occupation—Charity School.

Q. v. Sterry. 12 A. & E. 84: S. C. 4 P. & D. 122: 9 L. J. R. (n. s.) M. C. 105.

THE Friends' School at Croydon was assessed to the poor-rate, *exclusive of the two wings of the house occupied by the scholars.* It was instituted in 1702 by voluntary subscription, and the funds have been increased by charitable bequests and donations from time to time. A house and premises have been purchased and conveyed to trustees in trust for the maintenance of a school for poor children. The management of the school is intrusted to a committee appointed at quarterly or monthly meetings, and a sub-committee is appointed, who meet monthly, but the school is, in the mean time, under the management of a superintendent and mistress of the family, who live on the premises, and receive an annual salary. The committee derive no emolument from the school. The cash is kept at a

banker's, in the name of the treasurer, who receives no remuneration. The children received are nominated by agents appointed at the quarterly and monthly meetings, and are admitted, if approved of, by the committee. No child is eligible if its parents are able to defray the expenses of its education elsewhere. The parents and friends of each child pay the sum of 12*l.* per annum, though the average annual expense of the maintenance and education of each child is 20*l.*, the difference being made up from the income of the charity.

The house which is rated contains apartments for the superintendent and mistress, a kitchen for the use of the establishment, rooms for the meetings of the committees and for the domestic servants, but the different parties have no other accommodation than is essentially requisite for the discharge of their duties connected with the school. The garden and other premises are cultivated, and used for the school. No other persons than the children, the servants, matron, and superintendent reside upon the premises.

The committee-men were rated, and on appeal the sessions confirmed the rate.

In support of the rate it was argued, that this was not the case of a simple charitable institution, inasmuch as an annual sum was paid by the scholars; and the mere fact that it was not sufficient to afford a complete compensation was immaterial. There may be beneficial occupation of these premises, though the institution does not gain by the payment for the education of the children.

Contrà, it was contended that this was a mere charity, in respect whereof no person was rateable; certainly, the servants, the scholars, and the committee are not liable to be rated; and though the trustees have the legal estate, they derive no profit from the property, and have not its management. The annual payments cannot create a beneficial occupation, they are nothing more than the subscriptions in aid of the charity.

The Court took time to deliberate.

Lord Denman, C. J., afterwards delivered the judgment of the Court.—“ * * * Two questions are made—whether there

“ is any such beneficial occupation of the premises as will
 “ make the occupier rateable in respect thereof? and who, if
 “ any, is such rateable occupier?

* * *

“ No one can review the numerous decisions which cases
 “ somewhat like the present have occasioned, without regretting
 “ that the Court was ever induced to depart from the simple
 “ test which the subject-matter of the occupation would, in every
 “ case, have afforded. Whether the occupation was in respect
 “ of private or public or charitable purposes, we think it would
 “ have been wiser to have disregarded, and, wherever the sub-
 “ ject-matter was found productive to any one, to have rated
 “ the actual occupant in respect of that produce. The Court,
 “ however, would be bound by the authorities, for nothing is
 “ so important in this branch of the law as uniformity and cer-
 “ tainty. * * * There is clearly a rateable subject-matter, that
 “ is a subject, the occupation of which under ordinary circum-
 “ stances would make the occupier rateable. If these premises
 “ were to be let by the society, and every shilling of the rent
 “ devoted to the same purposes as at present, carried out at
 “ some other place, the tenant would be rateable on the amount
 “ of the rent paid, as the clear annual value of the occupation.

“ But even in the hands of the society there is a circumstance
 “ connected with the occupation which brings it within the or-
 “ dinary rule, and distinguishes it from those cases of occupa-
 “ tion for charitable purposes which have been considered not
 “ rateable, as not beneficial. This circumstance is the pay-
 “ ment of the 12*l.* per annum by or on behalf of each scholar.
 “ This sum, it is true, is not adequate to the expense, and in a
 “ popular sense does not make the occupation of the premises
 “ beneficial, *i. e.*, gainful: but still it is a revenue which the
 “ building produces, and actual gain on a balance of profit and
 “ loss is not needful; it is enough if a revenue be produced.

“ With regard to the occupier, there is no difficulty in deter-
 “ mining that the trustees must be considered as such. They
 “ are the owners of real property which is not demised to any

“ one ; the committee from time to time use certain parts, the ma-
 “ tron and the servants of the establishment others at all times ;
 “ but in all three cases the occupation is by the permission of the
 “ trustees, and in point of law must be considered as theirs. * * * ”

Order of Sessions confirmed.

Beneficial Occupation—Apartments in Royal Palaces.

Q. v. Lady Emily Ponsonby and others. 11 L. J. R. (n. s.) M. C. 65 : S. C.
 1 G. & D. 713.

HAMPTON Court Palace was presented to Henry VIII. in 1525, and has since constituted part of the royal demesnes of the Crown. It continued to be a place of the occasional residence of the sovereigns of England till the 10th of George II., since which time it has ceased to be a place of their actual residence. This palace contains a suite of rooms called the State Apartments, in each of which are pictures the property of the Crown, to which the public have access. It also contains a room called the Board of Green Cloth, and a gallery, used for a depository for lumber, which the public are not permitted to enter. A guard of honour is always on duty at this palace, and divine service is regularly performed by a chaplain appointed and paid by the Queen. Sentinels are placed at the various entrances to the palace, which are opened and closed at the pleasure of the Crown. The housekeeper of the palace, who is the only officer of the royal establishment resident in the palace, formerly employed servants to show the pictures, and received fees for such views as a perquisite of office. She is appointed and paid by the Crown, and as such housekeeper, and for the performance of her duty, resides with her husband and children in the part of the palace set apart for her use. Several other apartments in the palace are occupied by private individuals, in virtue of a written warrant from the Lord Chamberlain to the housekeeper in the following form :—

“ These are to require you to deliver unto —— the keys and
 “ possession of the following lodgings in Her Majesty’s Palace
 “ at Hampton Court, &c., which lodgings are to be inhabited by

“ ———, or some part of ——— family, a part of every year,
 “ or they will be considered vacant, and disposed of accordingly ;
 “ and when the family is absent from Hampton Court it is ex-
 “ pected that one of their servants should be left in their lodgings,
 “ or that the keys thereof should be left with you or the house-
 “ keeper for the time being.”

The occupiers of the apartments provide, at their own expense, any kind of household furniture and fixtures requisite for the furnishing and fitting up of such apartments, and are required to do the repairs necessary for their proper occupation. Many apartments occupied by private individuals communicate with the state apartments, and the doors of communication are kept locked during such occupation ; but if, in the general care of the palace, the housekeeper deems it necessary to open these doors, she exercises the power of doing so, and of passing through the apartments which are so occupied.

The husband of the housekeeper, and the other occupiers of the private apartments, having been severally assessed to the poor-rate, appealed against the rate, which was confirmed by the Sessions, subject to a case.

In support of the decision of the Sessions it was contended that the appellants were occupiers of rateable property, for private purposes, and for their own benefit. That the exemption of the Crown could not apply to the portions of the palace separately occupied by them. But it was conceded that the husband of the housekeeper could not be properly rated, as her occupation was wholly connected with her service.

Contrà, it was contended that the occupation was wholly that of the Crown, and that the parties have only a permissive use of the apartments, which is not exclusive. If the Crown were rateable at all, it would be assessed for the whole of the palace.

Lord Denman, C. J.—“ * * In considering this case we may
 “ either suppose that the Justices have formed an opinion, and
 “ referred to us, asking us whether there was any evidence to
 “ support it, or we may be considered as placed in their posi-

“ tion, and called upon to judge of the effect of the evidence.
“ Supposing them to have decided it, I am of opinion that they
“ have come to the right conclusion, namely, that they are
“ separate tenements, as regards the persons named who occupy
“ them, and if the facts were put to us * * * I should come to
“ the same conclusion.* * * In this case the Crown, for many
“ years, has not taken personal possession. There are pictures
“ of the Crown there, and some state apartments, but neither
“ by them, nor by the sentries who are stated to be on duty
“ there, does the Crown retain any personal occupation. Then
“ the apartments are in fact occupied by the parties who use
“ them, unless the statement in the case as to the keys prevents
“ such a conclusion ; but looking at all the other circumstances,
“ that appears to be no more than a particular condition in the
“ terms on which the grant or permission is made, and will not
“ exclude a beneficial occupation in those who use the apart-
“ ments. * * * It was asked, supposing the Crown could be
“ rateable at all for its occupation, and was not by law exempt
“ from all rate, would not the Crown be properly rateable for
“ the whole, and not the respective parties? My answer is in
“ the negative, and that the Crown would not be rateable. * * *
“ Upon the whole I am of opinion that these parties are bene-
“ ficial and exclusive occupiers, and as such are properly rate-
“ able.”

“ *Patteson, J.*—“ * * * I am not aware that the Statute of
“ Elizabeth has ever been held to mean that the same party
“ must be rated for the whole of a house. On the contrary,
“ the cases seem to show that there may be a rating for a part
“ only. * * * A house, therefore, may be divided into several
“ different holdings. * * * Then have these appellants an ex-
“ clusive occupation of what they occupy? The warrant shows
“ that they have, and that they also possess the keys. * * *
“ The respective apartments are assigned exclusively to the
“ persons named in the warrant. There appeared to be some
“ little difference as to those apartments immediately adjoin-
“ ing the state apartments ; but I apprehend, on consideration

“ of the statement relating to them, it is merely a condition
 “ annexed to the terms on which the parties hold, which does
 “ not touch the question of exclusive occupation for the purpose
 “ of rating.”

Williams, J.—“ It seems clear in this case that there is a
 “ beneficial occupation ; and even if the parties occupying could
 “ be taken to be public servants of the Crown (for which, ex-
 “ cepting the housekeeper, there is no pretence), still if there is
 “ a beneficial occupation, *ultra* the service, that is the subject-
 “ matter of rating. With regard to the quantity of interest
 “ the appellants may have, there appears no difficulty, as, even
 “ supposing the occupation were strictly permissive, that cir-
 “ cumstance will not relieve the occupants from the rate. * * *
 “ The only doubt appeared to me to be whether this could still
 “ be considered a palace of the Queen. If it is so, that would
 “ be an answer to the rate by these appellants, and the rate
 “ would then be misconceived. But no such presumption
 “ arises from the facts. The only part of the case bearing upon
 “ that is, that the housekeeper may go into some of the apart-
 “ ments. As to them there is a diminished quantity of occu-
 “ pation, but there is a rateable occupation still. With regard
 “ to the husband of the housekeeper, perhaps it is better, under
 “ the circumstances, that his name should be struck out of the
 “ rate.”

Rate amended by striking out the name of the housekeeper's husband, and confirmed as to the other parties.

No beneficial Occupation—Charity.

Q. v. Wilson. 12 A. & E. 94 : S. C. 4 P. & D. 130 : 9 L. J. R. (n. s.)
 M. C. 100.

THE Honorary Treasurer of the London Missionary Society was assessed to the poor-rate of the parish of St. Botolph under the authority of a local Act, as the occupier of certain premises occupied merely for conducting the affairs of the institution, which was founded for religious and charitable purposes,

and is wholly supported by voluntary and charitable contributions.

The building comprises various apartments, viz. a board-room, offices, museum, and store-rooms, in which various articles intended for exportation, in furtherance of the society's objects, are deposited. No persons sleep on the premises, but the clerks and officers attend during a portion of the day, and leave the premises in the evening locked up. The treasurer attends about one day in a week for the purpose of superintending the society's affairs there carried on by the clerks. He receives no remuneration from the society, nor does he nor any other person connected with the society derive any pecuniary profit or personal emolument from the occupation of the premises. The Sessions confirmed the rate.

In support of the order it was urged that the religious purposes to which the premises were applied were not disclosed; and that since 3 & 4 Will. IV. c. 30, the exemption must be limited to cases there pointed out; that the use of premises for the purpose of charity does not of itself afford a ground of exemption; and the owners of property cannot, by devoting it to charitable purposes, according to their own discretion, thereby exempt it from the poor-rate. Here, too, it appears that whatever the charitable purposes may be, they are to be executed in foreign countries.

Contrà it was contended that there was no beneficial occupation in this case, and therefore that the rate was not valid.

The Court took time to deliberate.

Lord Denman, C. J., afterwards delivered the judgment of the Court.—“ * * * It was argued that, though the Sessions
“ had found that the house was devoted entirely to charitable
“ and religious purposes, the charity, being evidently all administered in foreign parts, was not such as our law could recognise. But supposing this to be so, we think this appellant
“ is protected from liability to a poor-rate by the authority of
“ those decisions which require it to be imposed on the beneficial occupier. Here is neither benefit nor occupation ac-

“ cording to the language of those cases, and particularly of R.
 “ *v. Waldo*, Cald. 358, which has been frequently recognised,
 “ and is in its circumstances extremely like the present.”

Order of Session quashed.

*No beneficial Occupation — County-hall and Judges’
 Lodgings.*

Q. *v.* The Justices of Worcestershire. 3 P. & D. 8: S. C. 11 A. & E. 57;
 9 L. J. R. (n. s.) M. C. 17.

UNDER the authority of a Statute (1 & 2 Will. IV. c. xlviii.) a mansion-house and land had been purchased in the county of Worcester, and taken down, and a County-hall, Courts, and Judges’ lodgings built on the site. These buildings were vested in the Justices of the Peace for the county of Worcester for the time being, to be used for the public purposes for which they were designed. The hall is used as a County-hall, and the Courts as Courts of Justice. The house called the Judges’ Lodgings is erected for their use at the Assizes, and is also used by the magistrates who attend the Sessions, there being many bed-rooms in it besides servants’ apartments. A quantity of plate and wine, the former paid for by the county, the latter provided by subscription among the magistrates, is kept on the premises; the plate being used by the Judges, but the wine belonging exclusively to the Justices, and being used at their dinners. They find their own provisions, but do not pay for their use of the house and furniture.

There are a hall-keeper and house-keeper, who respectively have the care of the hall and lodgings, are paid a salary, and live in the house, but have no accommodation beyond what is necessary for the discharge of their duties.

The Justices of the Peace for the county were rated to the relief of the poor for the whole premises under the name of Judges’ Lodgings.

The rate was confirmed by the Sessions on appeal.

In support of their order it was contended, that though, so far as the premises were used for public purposes, they were

not rateable, yet that in the present case there was a personal benefit beyond the public purposes which was the subject of a rate, namely, the use of the premises by the Justices as a club; and as all the Justices of the county may attend the Sessions, the body of the Justices were properly assessed.

Against the order it was argued that the Justices of the county in a body were only trustees of the premises for certain public purposes, and could not be affected by the acts of individual Justices, or the benefit derived by such individual Justices. The whole body of Justices derive no beneficial interest whatever from the building.

Lord Denman, C. J.—" I am of opinion that this property
" is not rateable; the Justices at large cannot be said to have
" any beneficial interest in it, and what is done by a few of
" them for their own convenience cannot make a rate valid on
" the whole body, who only hold the premises for public pur-
" poses."

Patteson, J.—" It is only by the local Act that these Jus-
" tices possess anything like a corporate character. Their
" duties are prescribed to them in that Statute in express terms;
" and these buildings are appropriated to certain specified pur-
" poses. If these individuals choose to use the building for
" their own private convenience, how can it be said that this
" makes the whole body liable?

Williams, J.—" * * * It is said on the one hand that the
" Justices enjoy a beneficial interest *ultra* the public uses to
" which the building is dedicated; on the other, that no benefit
" accrues to the Justices at large, but only to a few individuals
" of that body. The latter proposition is clearly made out, and
" disposes of the case."

Coleridge, J.—" The legal estate in these premises is in the
" Justices of the county, but the *beneficial* occupation is only in
" those Justices who subscribe to the wine fund, and attend at
" the Sessions. It is impossible, therefore, to hold that the
" whole body are rateable."

Order of Sessions quashed.

No beneficial Occupation—County Gaol.

Q. v. Shepherd. 1 A. & E. (n. s.) 170; S. C. 4 P. & D. 534; 10 L. J. R.
(n. s.) M. C. 44.

IN the poor-rate for the township of Wakefield, Edward Shepherd, the governor of the House of Correction there, was assessed for a house and garden, and the magistrates of the West Riding as occupiers of a corn-mill, tread-mill-rooms, work-rooms, and warehouses, which are within and form part of the House of Correction of their district. The tread-mill and corn-mill are maintained for the purpose of employing the prisoners, and corn is ground there by them for the use of the gaol, and also for various persons who pay for such grinding. In like manner the work-rooms and warehouses are used exclusively for the prisoners to work in. Money is earned by their work and paid over to the treasurer of the county, but the expenditure far exceeds their earnings. Prisoners are brought from the boroughs of Leeds and Doncaster, and their maintenance charged at cost-price to such boroughs.

Shepherd is the governor of the said House of Correction, and the house and garden for which he is assessed are both within and parcel of this house. The former consists of ten apartments, nine of which are in Mr. Shepherd's occupation, and the tenth is used as a committee-room for the magistrates. The accommodation provided for him is such only and no more than is necessary for his convenient accommodation. The garden is chiefly used by the governor, but is not specially appropriated to his use, the object of the area being the health of the prisoners, to which it is essential.

Other persons, being the matrons and turnkeys of the prison, were assessed for their respective houses, premises, and apartments. They occupy dwellings within the walls, distinct from the governor, but the accommodation they enjoy is provided for by the Riding, and is no more than is necessary and convenient for the purposes for which they are placed there.

The Sessions, on appeal, amended the rate by striking out

the names of the matrons and turnkeys, and inserting those of the magistrates of the West Riding in the assessment, and confirmed it as amended.

In support of their order it was argued that Shepherd was rateable for the house and garden. Though property of a public nature, and used for public purposes, cannot be rated to the poor, where it is the subject of an independent occupation, for purposes other than those of the public, rateability attaches. Here the governor holds rooms, not merely as a servant, but as an independent occupier. They are not all necessary for the performance of his service as a gaoler; and if he has an independent beneficial occupation, it is sufficient for the purpose of the assessment. He has the benefit of the premises for his own domestic use, and it is not found that he has no further occupation than is necessary for the discharge of his public duties. The same principle applies to the matrons and turnkeys. They hold distinct dwellings, and have an independent occupation of them for their own domestic convenience. They are not servants, and consequently do not occupy as such.

It was conceded that the Justices could not be assessed.

Lord Denman, C. J.—"I think the rate must be quashed as
 "to the gaoler. He is an officer compelled to reside on the pre-
 "mises in question at all times; he performs his duty by that
 "act of residence; and the case states that nothing more is pro-
 "vided for him than is necessary for his convenient accommo-
 "dation. How can we say that a person is rateable under such
 "circumstances?"

The rate was quashed.

Occupation beneficial in regard to the nature of the Property.

Q. v. Vange. 11 L. J. R. (n. s.) M. C. 117.

IN the year 1621 the owners of certain lands in Cauvey Island, which at every spring-tide were overflowed by the river Thames, contracted with one Joas Copenberg to fence the said grounds from the inundation in consideration of his enjoying one-third of such lands in fee. 'The lands so vested in him and his heirs

have been termed *third-acre lands*, and the others were termed *free lands*. Those which have been since recovered from the sea are termed *outsands*.

By the 32 Geo. III. c. 31, certain Commissioners were directed to be appointed, and were required to maintain the walls, and banks, and drainage of the island, except those around the *outsands*, and to make such other works as may be necessary for the drainage of the island.

The Commissioners are empowered to tax the owners or occupiers of the third-acre lands, if necessary, to their full annual rent or value, and, if such assessment be insufficient, then to tax the other lands in the island, except the *outsands*.

They have since kept the works in repair, and in 1837, 1838, and 1839, assessed the free lands to supply the deficiency in the amount collected from the third-acre lands; and for several years past the sums assessed and raised by the Commissioners on the third-acre lands, for the purposes of the Act, have been equal to the rack-rent, or full annual value of those lands.

In the island, and in the parish of Vange, is a farm called Scar House, consisting entirely of third-acre lands, and the sum assessed thereon has been for the current and preceding years 123*l.* a-year, which is equal to its annual value. But the works provided for by the Act are an expense necessary to maintain the lands in the island in a state to command any rent from a tenant or to be capable of occupation.

The owner of this farm, which he had acquired without purchase, was assessed to the poor-rate of the parish of Vange at the full value, without making any deduction in respect of this sea-wall rate or embankment tax.

The Sessions, on appeal, amended the rate, finding that there was no rateable value.

In support of their order it was contended that, as the land is subject to this large outlay to render it capable of occupation, there is no rateable value. It is similar to the case of *K. v. Adames*, 4 B. and Ad. 61: *S. C.* 1 L. J. R. (n. s.) M. C. 90. Here too the rest of the land in the parish is protected by the

payment, and consequently the value thereof is increased. The tenant of the land has no beneficial occupation, as the value is applied to purposes no way beneficial to him.

Against the order of Sessions it was argued that this rate was analogous to a common sewer's-rate, which is not to be deducted under the provision of the Parochial Assessment Act. Here, however, it may be considered that the rack-rent of the land is applied to a particular purpose, namely, towards the cost of the drainage: still the value of the beneficial occupation remains the same.

The Court took time to consider, and *Lord Denman, C. J.*, afterwards delivered the judgment of the Court.

“ * * * The question presented to our consideration is
 “ whether the occupation of the premises by the appellant be
 “ such as to render him liable to the rate, a question of some
 “ difficulty certainly, and which is usually expressed to be
 “ whether the occupation be beneficial. * * * We will only
 “ here again observe that *beneficial* and *profitable*, in the
 “ ordinary sense of the words, are not convertible terms; that
 “ a party holding a property in its nature rateable is not dis-
 “ charged from liability because he does it at a loss. Suppose
 “ a farmer able to prove that he was holding his farm at a loss,
 “ that would not constitute an exemption from poor-rates. * * *
 “ The case of *K. v. Parrot*, 5 T. R. 593, is in point. The un-
 “ profitable and losing occupation of a coal-mine was held to
 “ create no exemption, because a coal-mine is, by the statute of
 “ Elizabeth, *eo nomine*, made rateable. In the present instance
 “ the substance of the rate is of the same description—house
 “ and lands, directly within the statute. What is there to ex-
 “ empt this property from rateability? One answer is, because
 “ it yields no profit to the owner—the appellant. Suppose the
 “ premises to be let to a tenant at the rent of 123*l.* a-year, the
 “ sum at which the Sessions seem to think, if rateable at all,
 “ they ought to be assessed. It seems to be clear in such case
 “ the tenant would be rateable for such occupation. Again,
 “ suppose that, instead of having paid nothing for it, and taking

“ it as he has, with the encumbrances, he had purchased it,
 “ and had left the whole purchase-money unpaid, but secured
 “ by mortgage on the premises—in what respect can that be
 “ different from the present? And yet in the case last supposed
 “ he surely would have been rateable. The case of *K. v.*
 “ *Adames* was one of the comparative amount of assessment
 “ whether property A was fairly rated in relation to property B;
 “ but there was no question, as here, of abstract rateability.
 “ Upon the whole we are of opinion that the sum of 123*l.*
 “ ought not to be deducted from the assumed gross rental in
 “ assessing this rate.”

Order of Sessions quashed.

Property of Municipal Corporations.

Q. v. Exminster. 12 A. & E. 2: S. C. 4 P. & D. 69: 9 L. J. R. (n. s.)
 M. C. 108.

THE Corporation of Exeter are the owners of a canal and towing-path, which passes through several parishes in the county of Devon, no part whereof is within that borough. The tolls and duties arising from it are paid to the corporation, and form part of the income and general revenues of this municipal corporation; are collected by their officers, and by them paid over to the treasurer of the borough fund. The annual income is more than sufficient to pay the interest of a mortgage to which they are subject. These tolls were assessed to the poor-rate of the parish of Exminster, but the Sessions, on appeal, struck out the assessment.

Against the order it was attempted to distinguish this case from *Q. v. Liverpool*, 9 A. and E. 435,* on the ground that here the property was situate in a parish not part of the borough, and therefore the rate-payers of the parish received no corresponding benefit in respect of the property, as they were not subject to the borough-rate. The principle of that case was argued again, and the propriety of the decision contested.

The Court took time to deliberate.

* See vol. i. of this Abridgment, page 102.

Lord Denman, C. J., afterwards said—" We think the circumstance that the property occupied was not situate in the borough, for the public purposes of which alone the occupation was beneficial, does not constitute a distinction between this case and *Q. v. Liverpool*. The liability of the property would be the same whether it was in the same district or not. * * We felt no doubt as to that decision, and now adhere to it."

Order of Sessions affirmed.*

Subject-matter of the Rate.—Lead-Mine, when Rateable.

Q. v. Todd and others. 12 A. & E. 816 : S. C. 4 P. & D. 335 : 10 L. J. R. (n. s.) M. C. 14.

APPEAL against a poor-rate for an omission to rate the Duke of Cleveland as an occupier of certain lead-ore in the township of Middleton, in Teesdale. The Duke of Cleveland was seised of the wastes in that township, and of the mines and minerals as tenant for life. In June, 1836, he demised to *the Governor and Company for Smelting Lead with Pit-coal*, all his lead-mines within certain specified districts in the township, with the necessary mining powers, reserving to himself a right to enter and view the mines, for twenty-one years, reserving by way of rent one-fifth part of all the lead or other ore which should be raised out of the premises, well and sufficiently cleansed, dressed, washed, and made merchantable and fit for the smelting-mill, at the costs of the company, to be delivered at the bingsteads upon the premises. The Duke received his fifth part accordingly. The ore, before delivery under the lease, had to undergo a very laborious and expensive process, in being bruised, dressed, and made merchantable and fit for smelting, by which all foreign substances were separated from the ore, but the character of the ore was not otherwise altered.

It was contended that the Duke was an occupier of land, and rateable, but the Sessions held otherwise.

In support of their order it was argued that in this case the Duke was not the occupier of anything, but as landlord received

* But see 4 & 5 Vict. cap. 48, which removes the effect of this decision, in Appendix, *post*.

the profits which he derived from the mine. He had demised the whole mines, and had only reserved to himself a right to enter and view them. The rent which he had reserved was a portion of the ore-mineral in an improved state and shape, very different from its condition when first detached from the mine. It cannot therefore be considered as an exception from the demise, for an exception must be of something belonging to the lessor, and this ore in its manufactured state did not belong to him.

On the other side it was argued that this case had been settled by the previous decisions. The ore here underwent the same process as in similar cases which have been held to be rateable. Nothing here is added to the ore, nor mixed with it: it is not smelted, nor reduced into any other state than that of ore. There is no objection to the reservation of a part of the ore of a demised mine, and the reservation gives to the lessor such an interest in the specific produce of the land as makes him a rateable occupier of a tenement.

Lord Denman, C. J.—"We are all of opinion that the Duke of Cleveland is a rateable occupier within the Statute 43 "Eliz. c. 2."

Order of Sessions quashed. Rate to be amended.

Tin-Mine—Toll Tin—when Rateable.

Q. v. Crease. 3 P. & D. 434: S. C. 11 A. & E. 677: 9 L. J. R. (n. s.) M. C. 38.

APPEAL against an assessment to the poor-rate on Mr. Crease, as the occupier of tolls of tin. It appeared that the Duke of Cornwall, being entitled to receive from the tin-borders of certain mines in Cornwall a tenth part of tin in the ore, called toll tin, had demised to one Smith, from whom the term had vested in Mr. Crease, a tenth part of the same, arising from a mine in the parish of St. Austell. The appellant had also granted licence to certain persons to enter and work another mine, called Buckler's Mine, of which he was himself the lessee, for a certain term of years, reserving to himself 1*s.* 4*d.* for every pound in value of ore raised by the adventurers, and from the date of that grant had received no ore, but payment

in money. He was assessed upon the value of the money payment in respect of this mine, and on the value of tin-ore constituting the toll tin. He was not an inhabitant of the parish. The Sessions reduced the rate from 40*l.* to 35*l.*, and confirmed it in other respects.

Two points were reserved by the Sessions. First,—whether the appellant was rateable at all in respect of the toll tin; and, secondly, whether he was rateable in respect of the money payment received from Buckler's Mine.

The rateability of the toll tin was not argued, as the Court of Queen's Bench held that they were concluded by the previous decisions.

On the second point it was argued that Mr. Crease had, in fact, only the toll tin to demise, that the effect of his demise was a grant of the toll tin, and that his taking a money payment instead of the ore in kind could not prevent his being rateable. As to his lessees, they took but a licence to dig, and are not the occupiers so as to be rateable. The appellant cannot be allowed to exempt himself from rateability by this contrivance.

Contrà it was contended that the appellant, having demised his entire interest in Buckler's Mine, and having reserved a sum of money for it, was not an occupier of lands, so as to be liable to the poor-rate.

The Court took time to deliberate.

Lord Denman, C. J., afterwards delivered the judgment.—
“ * * With respect to the effect of the lease, which raises the
“ principal point, it was urged in support of the rate that, in
“ truth, nothing passed by it, that the whole transaction was
“ colourable, and intended to exempt the property from rate-
“ ability. When, however, we find it expressly stated that, from
“ the date of the lease, the appellant has received no part of the
“ produce of the mine, but a money payment only, and further
“ bear in mind that it is not the province of this Court to pre-
“ sume or infer fraud where none is found by the Sessions, we
“ think that this circumstance (the money payment) distin-
“ guishes this case from those referred to, and brings it directly

“ within the principle of *R. v. the Earl of Pomfret*, 5 M. &
 “ S. 139, and *R. v. Tremayne*, 4 B. & Ad. 162, S. C. 1,
 “ N. & M. 194, which distinction is plainly pointed out by
 “ Le Blanc, J., in *R. v. Baptist Mill Company*, 3 T. R.
 “ 480, in the following words:—‘Where a person receives
 “ without risk part of the produce extracted from the bowels
 “ of the earth he is an occupier of land, but where he merely
 “ receives a rent or money payment he is not an occupier.’
 “ The consequence is, from the form in which the question is
 “ submitted to us in the case, that the assessment must be re-
 “ duced from 35*l.* to 5*l.*”

Crease v. Sawle. 11 L. J. R. (n. s.) M. C. 62.

To determine the first question as to the rateability of toll tin, the appellant brought an action of trespass for the distress, in which there was a special verdict setting forth all the above facts. A judgment passed for the defendants in the Queen’s Bench without argument, and the case was removed on a Writ of Error into the Court of Exchequer, and was subsequently argued there.

In support of the plaintiff’s case, it was urged that the plaintiff, being the lessee of tin tolls, had granted no interest in the land to the adventurers, but merely received a certain portion of the ore raised by them. It cannot be held that he is an occupier of land: but if he be so, he is the occupier of a mine which, it is conceded, is not rateable. As to Buckler’s mine, from which he receives a money payment, he cannot be said to be the occupier of that.

The Court overruled this latter objection, because, if the plaintiff were liable for the toll tin, the question as to the other subject-matter resolved itself into one of amount, and the proper remedy was an appeal.

Then it was argued that the authorities previously decided upon the point of the rateability of toll tin could not be supported.

Contrà it was contended that the owner of the soil, having a right to the tenth, not merely when the tin is severed, but

whilst it remains in the land, is rateable for such tenth. He is an occupier of land, and his rateability has been settled by various cases. As to the plaintiff being an occupier of a mine, it was urged that he had no right to enter the mine, and could not have been considered as a miner.

After deliberation,—

Tindal, C. J., delivered the judgment of the Court. After stating the facts, and the authorities of *Rowls v. Gells*, Cowp. 451, *The K. v. St. Agnes*, 3 T. R. 480, *The K. v. the Baptist Mill Company*, 1 M. & S. 612, and *The K. v. St. Austell*, 5 B. & Ald. 693, S. C. 1 D. & R. 351, he said that the Court of Error felt bound by these authorities, and concluded thus : —“ The rules which apply to the rateability of property are
“ everywhere daily acted upon in the management of parochial
“ affairs, and materially affect the value of estates. It would
“ be extremely inconvenient, and indeed mischievous, to over-
“ rule a class of cases which have been much discussed and
“ sanctioned by many eminent judges, and which are now
“ constantly acted upon, because we might not feel perfectly
“ satisfied with the reasons assigned for their decision; and if
“ we could permit ourselves to disregard those authorities on
“ that account, we might feel disposed, on the same ground,
“ to reject others who have put a construction on the Statute
“ of the 43 Eliz. which we might by no means be certain it
“ ought to bear. If we were now for the first time called
“ upon to explain the meaning of this Statute, which would
“ seem to have been framed with a view of rendering rateable
“ occupiers of every description of real estate, it might be very
“ questionable whether the occupier of mines of any descrip-
“ tion was exempt. But we think it wiser to abstain from the
“ discussion of such questions, and to abide by the construc-
“ tion which the numerous decisions have given to the words
“ of the Statute, and which have been for a length of time
“ constantly acted upon; and according to those decisions,
“ unless we were to hold that the occupier of every mine
“ except coal-mines is exempt, we feel ourselves equally bound

“to hold that he who receives a portion of the ore in an unmanufactured state is liable to be rated.”

Judgment affirmed.

Tithes—how to be Valued.

Q. v. Capel. 12 A. & E. 283 : S. C. 4 P. & D. 87 : 9 L. J. R. (n. s.)
M. C. 65.

THE appellant is the vicar of the parish of Watford, and receives compositions to the amount of 660*l.* annually for the small tithes arising therein; out of that sum the average annual payments of 82*l.* 15*s.* are made for tenants' rates and ecclesiastical dues; and he was assessed to the poor-rate on 540*l.*, being such a rent as the small tithes might be reasonably expected to let for from year to year, free from all usual tenant's rates and taxes, and deducting the amount of the ecclesiastical dues.

The occupiers of land in the parish occupied at rack-rents; but employed capital in the cultivation of such lands, and applied their time and skill in superintending the same, and the profits thereon on an average amounted to two-thirds of the net rent.

The same was the case with the occupiers of houses, &c., in which business of various kinds was carried on, and some houses were occupied where no business was carried on.

The rate was made according to the Parochial Assessment Act, upon the rest of the rateable property in the parish.

The appellant objected to the rate on the ground that he was rated unequally to the rest of the rate-payers, because they were not rated in respect of their profits, and no reduction was made in his rate in consequence of the omission in their assessments of the profits made by them.

The Sessions confirmed the rate.

In support of their order it was argued—First, That the appellant had not objected that personal property, which is assessable to the poor, had not been included in the rate. If he had done so, perhaps it might have been urged that the tithes were overrated, but such would have been the case with all the inha-

bitants in the parish. Secondly, The proper mode of rating lands and tenements is upon the assumption of the net annual value, or the rent as its criterion. Thirdly, So far as the profits on the occupation arise from the use of the land, or of permanent improvements thereon, the same are rateable, and they are included in the present assessment; but so far as they accrue from the use of farmer's stock, or his capital and labour, or from the shopkeeper's trade and business, they are not assessable so long as personal property is not rated. Fourthly, The authority of *K. v. Joddrell*, 1 B. & Ad. 403, if examined, does not support the view taken by the appellant, and if it does it cannot be supported. Lastly, Whatever might have been the proper mode of assessing this property under the Statute of Elizabeth, the Statute 6 & 7 Will. IV. c. 96, § 1, requires that the rate shall "be made upon the net annual value of the several hereditaments rated thereunto; that is to say, of the rent at which the same might reasonably be expected to let from year to year, free of all tenants' rates and taxes, and tithe commutation rent-charge, if any, and deducting therefrom the probable annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain the same in a state to command such rent." The assessment in question is expressly conformable therewith. Then the proviso, "That nothing herein contained shall be construed to alter or affect the principles or different relative liabilities, if any, according to which different hereditaments are now by law rateable," cannot apply to such a case as this, where the law does not allow of any difference in the relative liabilities.

Contrà, it was contended that the appellant's objection was that the occupiers of land and houses are not rated to the full value of the land and premises. He did not complain of inequality of assessment among the different occupiers, but that he is rated upon the full value of what he occupies, while they are only rated upon a part of the profits,—namely, the rack-rent. This is not according to the principle established by all the authorities before the case of *K. v. Joddrell*. The

rate on the rack-rent is only on a part of the value, and was only lawful when all the rate-payers concurred ; to such extent only it afforded a fair criterion. That case expressly determines that the rent is only a part of the profit of the land, and that all profit is rateable. It may be true that a difficulty may exist in ascertaining the amount of the profit, but such difficulty is not insuperable ; an average may be estimated in this case, as in the case of personal property, which was clearly assessable.

Assuming that the rate was not supported by the former law, the Statute 6 & 7 Will. IV. c. 96 has not rendered it valid. Tithe is not a hereditament to which it can be considered as applicable, and the form of the rate given in the schedule is not applicable to tithe. The Statute must be treated as confined to the rating of land and houses. But, however that may be, the proviso prevents the application of the enactment to tithes. Its object was to prevent the inequality of assessing tithes at their full annual value, whilst other real property was only assessed at rack-rent.

The Court took time to deliberate, and

Lord Denman, C. J., afterwards delivered the judgment of the Court :— “ * * * The argument before us extended over
“ a very wide range. * * * In our view, however, it is neither
“ necessary nor useful to pursue the same course, because this
“ rate strictly complies with the enacting part of 6 & 7
“ Will. IV. c. 96 ; and if that embraces tithe as well as land,
“ and if the proviso at the end does not interfere, that rate will
“ be good, even though it could not be sustained on the princi-
“ ples laid down in former decisions.

“ Now it cannot be questioned that the words used in the
“ enacting part are large enough to embrace tithes. *Hereditaments*
“ *taments* is a division under which a lawyer would class tithes.
“ The expressed object of the Statute is to break down distinc-
“ tions and establish uniformity of rating ; and the rule which
“ it propounds is thus far applicable to tithes that they are
“ demisable at a yearly rent. * * *

“ But supposing tithes to be within the enacting part, it was

“ strongly contended that they must also be within the proviso.
 “ * * * This language, it must be owned, is very inartificial,
 “ and loose to a degree which renders the discovery of a
 “ definite meaning to all its parts extremely difficult. * * * If
 “ *principles* and *liabilities* are intended to signify the same
 “ thing, tithes are not within the proviso, because the tithe-
 “ holder was never rateable on any principle different from the
 “ landholder. If there be one part as to which the spirit of all
 “ the decisions is uniform, it is that the rate must be adjusted
 “ on the principle of equality. The Court possibly has not in
 “ every instance worked out its purpose successfully; but the
 “ object has never been lost sight of, and the Court has con-
 “ stantly laboured to find out the net annual produce, after
 “ making proportionally equal deductions. In the instances
 “ where the Court may have failed to do this, the failure has
 “ been principally caused by the general practice (prohibited
 “ by the late Statute) of rating aliquot parts of the value
 “ instead of the whole, and the consequent difficulty of dividing
 “ the burden between the various kinds of property, and in a
 “ great degree by the ambiguous and fluctuating sense of many
 “ terms necessarily employed in speaking of the subject-matters
 “ of the rate.

“ Viewing, then, the decisions according to their avowed in-
 “ tention, and not with a minute reference to particular expres-
 “ sions, we find no variety in the *principles* of rating. But the
 “ word *liabilities* is supposed to go much farther, and to set up
 “ the doctrine of *K. v. Joddrell* to the extent of showing that
 “ land and tithes are under *different relative liabilities*, which
 “ difference the proviso meant to leave untouched.”

His Lordship then examined that case, and pointed out that the exact decision thereof was fully supported; but commented upon the passage in the judgment in which it is said that the rate on the rack-rent is in effect a rate on a *part* of the profit only. He concluded thus:—

“ That discussion we purposely decline; preferring to say
 “ merely that *K. v. Joddrell* does not convince us that there

“ was any difference in the legal liabilities of the tithe-owner
 “ and the occupier of land.

“ If any case shall arise in which the facts show that the rule,
 “ though formally applied according to the Statute, will work
 “ injustice to the tithe-owner, there will be no more difficulty in
 “ relieving him than in relieving one landowner as against
 “ another. But the facts of this case call for no such interpo-
 “ sition.

“ It was suggested that in this view of the case the proviso
 “ will have no operation. We are not quite sure that it will ;
 “ as the attempt to apply it to special modes of rating pre-
 “ scribed by some local Statutes did not appear very successful.
 “ But this doubt grows out of the language of the proviso itself,
 “ which expressly avoids to state affirmatively that there are
 “ any cases to which the proviso can apply. Certainly some-
 “ thing much more decisive was requisite to defeat an enact-
 “ ment so simple, practical, and useful.”

Order of Sessions confirmed.

Railways—how to be Valued.

Q. v. The Directors of the London and South-Western Railway Company.

2 G. & D. 49 : S. C. 1 A. & E. (n. s.) 558 : 11 L. J. R. (n. s.) M. C. 93.

THE London and South-Western Railway Company, established under several Acts, have formed a line of railway from Vauxhall to Southampton ; and in pursuance of section 150 of the 5 Will. IV. c. lxxxviii. (one of them), have caused lists of the tolls which the Company have appointed to be received to be made, and keep a separate account, showing the amount which would be received by them for the use of the said railway, in respect of passengers, &c., if carried by other parties, which is open to the inspection of any overseer of the poor of any parish through which the line passes.

The sum which would have been so received by the Company in one year, in respect of the line of the railway which is in Mitcheldever, amounts to 3470*l.* 13*s.* 9*d.*

The whole sum received by the Company, in respect of that part of the line, is 13,880*l*.

The former sum constitutes the proportionate sum which would be received by any person who contracted with the Company for the exclusive right to take tolls for the use of the line, and the sum of 1293*l*. is the rent which a yearly tenant would give to the Company for such exclusive right, after making the deductions prescribed by the 6 & 7 Will. IV. c. 96.

The parish officers assessed the Company at the sum of 4320*l*., upon the principle that the value was not to be limited by the amount of the tolls, but that the advantage which a lessee of the railway might be expected to derive from his lease by his supplying power, and carrying passengers and goods upon it, was to be taken into account. This sum was fixed in proportion to the amount gained on the whole line, and not with reference to the receipts in the particular parish.

Upon an appeal the Sessions confirmed the rate.

The case was argued very elaborately, and the Court took time to deliberate.

Lord Denman, C. J., afterwards delivered the judgment of the Court.

“ * * * The question raised is whether, this Company being in
“ occupation of its own railway, and at present in the exclusive
“ use of it, in fact, for the purpose of a large carrying-trade,
“ the rateable value of such occupation is to be taken only
“ upon the amount of certain tolls which have been fixed under
“ the Statutes, as payable generally by all carriers for the use
“ of the railway, but which are in fact never paid, or upon the
“ amount of the general profits which the Company in fact
“ receives from the occupation so devoted to such carrying
“ trade.

“ Another question was raised as to the mode of measuring
“ the rate, on whichever of the two principles it was to be cal-
“ culated, namely, whether it was to be measured according to
“ the proportion which the mileage of the railway in the

“ parish bears to the whole length of the way, assuming the
“ profits to arise equally through the whole, or according to
“ the actual earnings in the parish.* * * It was conceded ulti-
“ mately that the latter was the proper mode. * * *

“ By the 4 & 5 Will. IV. c. lxxxviii., the proprietors were
“ incorporated and authorised to purchase lands in fee simple.
“ * * * On the land so purchased they are to make and main-
“ tain a railway, with warehouses, stations, and landing-places,
“ for the purpose of locomotive engines, carriages, waggons,
“ &c., and for loading, &c., of goods, and the approach and
“ departure of passengers conveyed. For the tonnage of goods,
“ &c., * * they may demand certain tolls, of which the maxi-
“ mum is fixed, but not the minimum; and further, they may
“ themselves provide power for the propelling of persons and
“ things, or they may themselves convey such persons or things
“ on their railway, for which, in addition to the before-men-
“ tioned tolls, they may charge such sums as they may from
“ time to time fix. The Company may therefore be simply
“ the owners of the way on which others may place steam-
“ power and carriages, and convey persons and goods, and
“ these persons would then stand much in the same relation to
“ each other as the trustees of a turnpike-road and the coach
“ and post masters conveying passengers on it. In this case
“ they would receive the tolls only, the owners of the steam-
“ power and carriages the fares or remuneration for the
“ conveyance; and it would be of course the interest of the
“ Company to raise the tolls to the maximum, or as near to it
“ as the competition of the ordinary modes of travelling would
“ allow. On the other hand, the Company may avail them-
“ selves of the latter clauses, and unite both characters of
“ owners of the way and carriers on it; they will then receive
“ both the tolls and the fares. In both cases the persons or
“ owners of goods conveyed must pay both the tolls and the
“ fares; but in the latter, as the Company would be the first
“ and last receivers of both, they might be charged as well as
“ paid in one undistinguished sum; there would be no division,

“ and, supposing the Company to be the only carriers, there
“ would be no necessity for fixing any rate of toll at all ; the
“ whole payment might just as well be considered fare. * * *

“ The argument for the Company may be stated shortly.* *
“ It is said that, in order to apply the Statute 6 & 7 Will. IV.
“ c. 96, it is always necessary to suppose the property in re-
“ spect of which the rate is imposed let from year to year. The
“ portion of the railway in the respective parishes must there-
“ fore be supposed to be so let ; and in order to estimate the rent
“ it must be asked what the tenant would take by the demise.
“ The answer to which would be, the portion of the railway
“ itself and the perception of the toll as before fixed by the Com-
“ pany. He would have the right to place his own carriages
“ on the railway, not in virtue of the demise, but in common
“ with all the world. The gross rent, therefore, would be
“ something less than the amount of the toll by the allowance
“ for tenants’ profits ; and after making therefrom the statutable
“ deductions, the residue will be the net annual value on which
“ the rate is to be imposed. If, because the lessee in occupa-
“ tion should place carriages on the railway, and derive there-
“ from a profit, you were to rate him in respect of that profit,
“ you might equally rate any other carrier using the railway,
“ but having no interest in it ; for the user, in the case of a
“ lessee, is not referrible to his occupation under his demise.
“ This, therefore, would be in violation of the Statute.

“ * * * It is obvious that the case here supposed, which is
“ that of a lessee in exclusive perception of the tolls on a rail-
“ way, *practically open to rival carriers*, is one very different
“ in fact from the case before us ; one, moreover, which not
“ only has not occurred, but, from the nature of things, it may
“ be said never can occur. * * * How can we suppose any com-
“ petition possible with the Company now the carriers, or in-
“ deed any free use of the railway, even by a private carriage,
“ the Company retaining the independent occupation and con-
“ trol over all the existing approaches ? Nay, a lease which
“ should include the stations and warehouses and approaches,

“ and place the lessee as to extent of occupation in the same
 “ position exactly in which the Company now are, would not be
 “ without its difficulties, for the Company’s act is framed * * *
 “ with some regard to the interest of the public as well as of
 “ the Company. The travelling and conveyance by carriages
 “ drawn or propelled by locomotive engines are attended with
 “ peculiar and very alarming risks. Many regulations of
 “ police, therefore, are enacted, which the Company are charged
 “ to enforce, and it is very questionable whether their lessee
 “ could be their delegate as to this trust, while it is certain that
 “ the Company out of possession could not discharge the duty
 “ so conveniently or perfectly as they now can.

“ * * * The proviso in the 6 & 7 Will. IV. declares that the
 “ principles of rating are not to be altered or affected by it. It
 “ is, therefore, important to consider how, under the circum-
 “ stances stated in the case, the company would have been
 “ rated, if that Act had not passed. They would then have
 “ been found occupying buildings and lands on an entire line of
 “ railway, and carrying on a trade not merely therein and
 “ thereon, but thereby a trade inseparably connected with such
 “ buildings and such lands, a trade that could have no existence
 “ without the buildings and lands, and but for which the build-
 “ ings would not have been erected or occupied, and for the
 “ sake of which in a great measure the lands themselves are
 “ occupied in a particular manner. The profits of this trade
 “ would be included in the fares received for the conveyance of
 “ goods and passengers, and the question would be whether these
 “ profits ought in any or what degree to affect the rateable
 “ value of the lands and buildings.”

His Lordship here cited and examined the cases of *R. v. St. Nicholas, Gloucester, Cald.* 262; *R. v. Bradford*, 4 M. & S. 317; and *R. v. the Trustees of the Duke of Bridgewater*, 9 B. & C. 68, *S. C.* 4 M. & R. 143.

“ Let now the principle which these cases establish be applied
 “ to the facts before us, if we wish to know whether the fares
 “ would have been properly included in the rate before the

“ Assessment Act passed. We apprehend that, according to
“ that principle, the only question to be asked would be, do they
“ increase actually the value of the buildings and lands on
“ which the rate is to be made? If they do, and to whatever
“ extent they do, to that extent, due allowances always being
“ supposed, they must directly or indirectly be included. It
“ would be no answer to say that by law the railway is a high-
“ way, that all the world may carry goods and passengers upon
“ it, that it is an accident that the Company alone monopolize
“ all the trade, and that their monopoly may cease to-morrow.
“ These circumstances, so far as they lessened the *value* of the
“ buildings and lands, would be proper to be taken into the
“ account as to the *quantum* of the rate, but they would not
“ affect the *principle*. Then do the fares increase the value of
“ the buildings and lands? No one can doubt—indeed the case
“ has answered—that they do; that a higher rent for the build-
“ ings and lands might be obtained in consequence of the facility
“ afforded by the occupation of them to the carrying on of a
“ lucrative trade, and earning the profits on those fares. * * *

“ Will it make any difference in the *principle* that the rail-
“ way is in more parishes than one, and that we are dealing
“ with a parish in which, so far as appears, there is no station-
“ house or other appendage to the railway? We think not.
“ The subject-matter of the rate in any particular parish is no
“ doubt the beneficial occupation of the land there, and you
“ cannot draw into the rate the value of the occupation of build-
“ ings elsewhere; yet, as you are to rate on the value in the
“ parish, *however occasioned*, you cannot strike off any portion
“ because it would not have existed but for the occupation of
“ buildings in another parish; still it exists, and in the parish,
“ and therefore cannot escape the rate there. * * * Wherever
“ the valuable occupation is, there the occupier must be rated
“ in respect of it. Then, in the present case, it would become a
“ question of fact. Is the land occupied in the respondent
“ parish by the railway more valuable, in fact, to the occupier
“ by reason of its occupation, together with the stations, &c.,

“ elsewhere, and the general purposes to which all together
“ are applied? We suppose that, without doubt, this would be
“ answered in the affirmative. Sever it from them, and three
“ or four miles of railway, unapproachable, leading from and
“ to no place, having no connection with any termini, would be
“ absolutely useless and unproductive. * * *

“ * * * Has then the Parochial Assessment Act made any
“ difference in this respect? Now, without having recourse to
“ the express language of the proviso, it is clear that the enact-
“ ing part introduced no new principle of rating. * * * Both
“ parties in the present case appeal equally to this criterion.
“ The difference between them is (there being no real demise)
“ what is to be brought into the supposed demise; and as to this
“ it is obvious that the Statute can make no difference, the only
“ question between the parties being as to the proper mode of
“ applying the admitted principle. * * * We shall be at no loss
“ to see that to break up this entire line into parochial portions,
“ and then in imagination sever all and each from the build-
“ ings which the occupiers occupy with it *de facto*, exclusively,
“ and under the authority of the same Statutes, passed in
“ furtherance of one grand scheme; and then again, in imagina-
“ tion, to sever both from the traffic which the occupiers carry
“ on, in, by, and throughout the whole *de facto* exclusively, and
“ for the sake of which they have made, built, and occupy the
“ whole,—is to apply the principle of the Statute in form and
“ not in substance, and so as to lead to a mere evasion of its
“ object.

“ If it be said that * * * the Company may lease their line
“ and become mere carriers on it, or that they may demise
“ their buildings and carriages, cease to be traders, and become
“ mere occupiers of the railway, the answer is, that, whenever
“ either of these states of facts shall arise, the rate must be
“ altered to meet it; but that even then, in all probability, the
“ result to the parishes would be much the same, the rate only
“ would become apportionable between two classes of occupiers,
“ instead of being charged to one.

“ But it is said that the private Statutes conclude this ques-
 “ tion by the clauses directing, under a severe penalty, a certain
 “ account of tolls to be kept for the benefit of the overseers of
 “ the poor. It is asked what object can be conceived for that
 “ provision as to the tolls *alone*, unless the tolls alone be the
 “ fund with which the overseers have to do? * * * The framers
 “ of this Statute, which must not be dealt with when we are
 “ talking of intention exactly as if it were a public general Act,
 “ but rather as the mode of carrying into effect a bargain
 “ between certain individuals and the public, no doubt intended
 “ to limit the rate, if by law they could, to the tolls alone, and
 “ these clauses were inserted to effectuate the working of that
 “ mode of calculating the assessment if it should prevail.

“ * * * We conclude, therefore, in favour of the respondents’
 “ principle. * * *

Order of Sessions confirmed.

Tolls, Port Dues—when not Rateable.

Q. v. The Bristol Dock Company. 1 A. & E. (n. s.) 535 : S. C. 10 L. J. R.
 (n. s.) M. C. 105 : 1 G. & D. 76.

THE Bristol Dock Company were rated to the poor of the parish of Clifton as occupiers of Cumberland Basin, the entrances there-
 to, quay, walls, wharfs, locks, and dock-gates, upon a rental of
 1350*l.*, in the sum of 54*l.*, which was reduced, on appeal, by
 the Sessions, to a rental of 300*l.* and a rate of 15*l.*

By the 43 Geo. III. c. 140, the Company were formed, with
 power to convert a portion of the river Avon, running through
 the city of Bristol, into a floating harbour, to make a new course
 for the river, and two basins, one of which was afterwards
 called Cumberland Basin, to afford a passage for shipping from
 the new course to the floating harbour, and to make various
 other works. The Company were authorised to take certain
 specified rates and duties from all vessels entering into *the port*
of Bristol, and the surplus of these duties, after payment of
 the interest of the money borrowed, and the expenses of pre-

serving the works, were to be divided among the shareholders of the Company.

By section 64, reciting that certain lands in the parishes of Clifton and others would, during the time the intended works were being carried on, and for many years afterwards, be unproductive and incapable of being rated, it was enacted that the Company should become chargeable, from the time of their taking possession, with such land and parochial taxes as the same lands then were, or might thereafter be, subject to, and that the funds of the Company should be liable to pay such taxes during the execution of the works *and for ever thereafter*.

The Company purchased eleven acres of land in the parish of Clifton, which were worth at the time 44*l.* 18*s.* 6*d.* yearly, and paid taxes on that value. The present value of that land, if it had continued as before, would be 67*l.* 7*s.* 9*d.*, and the Company contended that this was the proper assessable value. On this land the Cumberland Basin had been made.

The various works prescribed by the Act had been performed, the floating harbour was made, and the basins were constructed. For the accommodation of the steam-packets frequenting the port, the Company permitted the walls of the basin to be used as quays, for which they received yearly 314*l.*; but no tolls for the landing at such quays are given by the Act.

The port of Bristol includes several parishes besides that of Clifton, and the dock dues are demanded and collected from vessels discharging at various places within the port, whether they discharged in Cumberland Basin, or within the parish of Clifton, or elsewhere, and no part of the tolls is, in fact, collected in that parish.

The Sessions submitted to the Court the questions whether the Company were rateable in respect of the lands so taken, or by reason of the rates and duties imposed on vessels entering the port, or only in respect of the land so taken by them after the rate at which the same would be worth to let, if the same were valued in its original state of meadow or pasture land.

In support of the order of Sessions, it was contended that the Dock Company were rateable in the parish of Clifton for Cum-

berland Basin, in respect of the tonnage dues as a profit of the basin. The consideration for the dues is the construction of the works, of which Cumberland Basin is the principal; and as those works are the meritorious cause of the dues, it is immaterial where the dues are levied and collected. The basin here facilitates the passage to the quays in the city.

Contrà, it was argued that these were mere tolls, and not a profit arising from the use of the basin. They are paid on the entering the port, whether the vessel ever enter the basin or not. If the Company be rateable in this parish for a proportion in respect of the works performed by the Company, how is that proportion to be estimated, as the works were executed in various parts of the city, and in various parishes? Then the 64th section renders the land taken by the Company rateable for ever, at the rate at which it would have been rateable if it had continued in its original state. No other meaning can be given to the words.

The Court took time to deliberate.

Lord Denman, C. J., afterwards delivered the judgment of the Court.

“ * * * The question divides itself into two: first, whether by virtue of the Act the Company is made rateable in respect of the property, with the addition of all or some proportion of the tolls or dues so collected in the port of Bristol, and, if not, whether it be so by virtue of the law generally applicable to rating property of this description. The first question depends on the 64th section of the Act, which especially refers to the manner in which the Company is to pay the land and other taxes. * * * We think that this enactment falls much short of charging the Company with liabilities in respect of the tolls and dues in question: for, first, if it had meant to charge the Company with such additional liabilities, it is hardly probable that the property would have been described as rendered unproductive and incapable of being rated during the works, and for many years afterwards, because the nature of the work, as described in the Act, being to make a more commodious communication with

“ the port of Bristol, and generally to improve the same, if the
 “ tolls and dues therein so received had become liable to the
 “ rate, some profit at least must have been expected imme-
 “ diately upon the completion of the works, the use of the
 “ basin, entrances, &c. * * * Moreover, the mode of rating
 “ *from the then* state of the property is expressly declared to
 “ be the mode to be adopted for ever thereafter.

“ The question then is, whether this property is liable to be
 “ rated at the increased value independent of the operation of
 “ the Act; and upon this point, since the decision of the cases
 “ of *K. v. Nicholson*, 12 East, 330, and *Williams v. Jones*,
 “ *ib.* 346, the principle upon which a rate upon toll is to be
 “ imposed has been fully established, although the application
 “ of that admitted principle may not always be so. It is, that
 “ the tolls are rateable as profits of land within the parish for
 “ which the rate is imposed. * * * Whether that principle so
 “ established would, without further authority, necessarily ex-
 “ clude the consideration of profit arising elsewhere it is not
 “ necessary to consider, because we find the principle expressly
 “ recognised, and the reasons for it fully given, in the case of
 “ *K. v. Coke*, 5 B & C. 797, where the tolls of a lighthouse
 “ were held not rateable because they accrued out of the
 “ parish. * * *

“ Upon the whole, we are of opinion that the assessment
 “ should be reduced to the sum of 3*l.* 7*s.* 6*d.*, being after the
 “ rate of 1*s.* in the pound on 67*l.* 7*s.* 6*d.*, the present and
 “ rateable annual value of the property in question as land.”

Rate altered accordingly.

Refusal of the Copy of the Poor-rate.

Wethered v. Calcatt. 11 L. J. R. (n. s.) M. C. 123.

DEBT against an overseer for penalties under the 17 Geo. II. c. 3, for refusing an inspection of the poor-rate, and a copy thereof, to a rate-payer. The plaintiff was a churchwarden of the parish of Little Marlow, and the defendant was an overseer. The plaintiff applied to the defendant for a copy of the

rate, and offered to pay for it. The defendant promised to give the plaintiff a copy, but afterwards refused to do so. It was objected for the defendant that the plaintiff, being himself a churchwarden and overseer of the poor, was not an inhabitant of the parish within the meaning of the Statute 17 Geo. II. c. 3, and the defendant had leave to move to enter a nonsuit. A motion having been made accordingly, cause was shown against it; and it was argued that there was nothing to exclude the churchwarden, being an inhabitant, from the benefit of this Statute. The right to the copy of the rate is given to every inhabitant, and it may be particularly necessary to the churchwarden. In this case also the defendant had admitted his liability by his promise to give the copy,

Tindal, C. J.—" * * * The only question is, whether the
" facts proved bring this case within the 17 Geo. II. c. 3.
" Now, that Statute was passed, as appears from the recital in
" the preamble, to give inhabitants a remedy against church-
" wardens and overseers making unjust rates in a clandestine
" manner; and it seems to me that the word '*inhabitant*' is
" used in that Act in contradistinction to the words 'church-
" wardens and overseers.' *If churchwardens and overseers do*
" *their duty they will all be present when the rate is made;*
" and they therefore can have no need of the aid of that
" penalty which the Act imposes to procure a knowledge of
" the rate. The object of the legislature was to protect inha-
" bitants generally, as against the makers of the rate; and, that
" being the object, the plaintiff, who was a churchwarden,
" requires no such protection. He has not shown himself to
" be a parishioner or inhabitant within the intention of the
" Statute. Then it has been argued that what took place
" when the defendant desired the assistant-overseer to give the
" plaintiff a copy of the rate was a virtual admission that he
" was liable to furnish it. But a verbal voluntary promise to
" perform an act, which a man is not bound by law to perform,
" does not place him in a worse situation than he was in before
" the promise; and it cannot be that the defendant should, by

“ such a promise, render himself liable to the penalty which
 “ the Statute imposes. * * * ”

Coltman, J.—“ * * * The defendant might have answered
 “ the plaintiff’s demand of a copy by saying, ‘ You have access
 “ to the rate as well as I; make out a copy for yourself.’ * * ”

Maule, J.—“ * * * I think the general expression ‘ inha-
 “ bitant or parishioner ’ must be limited in its construction by
 “ the evident intention of the Act, which was not to interfere
 “ with disputes between churchwardens and overseers *inter se*,
 “ but to remedy the inconvenience to which the inhabitants at
 “ large had been subjected by the unlimited powers which the
 “ churchwardens and overseers possessed as to the making of
 “ rates. * * * ”

Cresswell, J.—“ * * * The three sections of this Act were
 “ all framed for the purpose of providing a remedy for the
 “ mischief referred to in the preamble; and they are all
 “ remedies given to the same persons, viz. inhabitants or
 “ parishioners, against the same persons, viz. churchwardens
 “ and overseers, making unjust and secret rates. The 1st
 “ section provides as a remedy that the rate shall be published;
 “ the 2nd, that the churchwardens and overseers shall allow
 “ the inhabitants to inspect the rate, and that they shall give
 “ copies of it when demanded; and the 3rd, that they shall be
 “ liable to a penalty if they refuse to do either. The same
 “ class of persons is to have the remedy in all the three cases.
 “ Now it is clear that the relief given by the 1st section is not
 “ given to churchwardens and overseers. They cannot require
 “ the publication of the rate to the making of which they are
 “ themselves parties, and of the contents of which they must
 “ be supposed to be cognizant. Then if the 1st section does
 “ not apply to them, neither does the 3rd. Churchwardens,
 “ moreover, have a right to the possession and custody of the
 “ rate-books, which is a higher right than the right to inspect
 “ them, or to take a copy of the rate.”

Rule for entering a nonsuit absolute.



Demand of Poor-Rate.

Morrell v. Martin. 6 Bing. N. C. 379 : S. C. 8 Scott's R. 688 : 11 L. J. R.
(n. s.) M. C. 22.

IN this action the question turned upon the sufficiency of the demand of payment of a highway-rate by one of several surveyors.

Tindal, C. J., in delivering the judgment of the Court, said, —“ In the case of the poor-rate, though the major part of the
“ churchwardens and overseers must make the rate, yet, for the
“ purpose of levying it, a demand by one of the overseers, and
“ a complaint by one to the Justices, is sufficient, it being pro-
“ vided by the 49 Eliz. c. 2, that it shall be lawful for the
“ churchwardens and overseers, or *any of them*, by warrant,
“ &c., to levy the said sums.”

Recovery—Warrant for several Rates.

Sibbald v. Roderick and others. 3 P. & D. 106 : S. C. 11 A. & E. 38 :
9 L. J. R. (n. s.) M. C. 76.

THE plaintiff's goods were distrained for a poor-rate, and he brought an action of *replevin*, which the overseers defended.

It appeared that the plaintiff had been rated for the tithes of the parish of Llanbadarnadin for some years, but had not paid his tithes nor appealed. He was summoned for not paying the sum of 40*l.* 6*s.* 8*d.*, claimed for arrears of rates ; and, refusing to pay it, a distress warrant issued for that sum. It was shown that some of the rates had not been published on Sunday, as required by the 17 Geo. II. c. 3, § 2. The judge (Gurney, B.) at the trial held that the nonpublication made the rate a nullity, and, as the warrant was for one gross sum, the distress was illegal. He directed a verdict for the plaintiff.

A motion was made in Court for leave to enter a verdict for the defendants, on the ground that the plaintiff's remedy was by appeal only, and that he was not at liberty to bring an action of *replevin* ; and it was urged that the 17 Geo. II. c. 3,

§ 1, which provides for the publication of a poor-rate, was directory only.

Lord Denman, C. J., stated that the Court was of opinion that the ruling of the judge was correct; and that, as any rate of which notice had not been duly given was invalid, the objection must prevail.

Rule refused.

Recovery of.

Peppercorn v. Hofman. 9 M. & W. 618: S. C. 11 L. J. R. (n. s.) M. C. 423.

THIS was an action of trespass for breaking and entering the plaintiff's house and taking his goods. The defendant was a broker, and had distrained the goods in question under two warrants of distress for levying poor-rates due from one Duncan, who was the landlord of the house in which the plaintiff lodged, but did not reside in it. The rates were due to the parish of St. Martin-in-the-Fields, under a local Act, 10 Geo. III. c. 75, which, by § 15, enacts that the rates thereby directed to be made shall and may, on *refusal* or *neglect* to pay the same by any person liable thereto, be recovered in such manner as the rates made for the relief of the poor are directed to be recovered by the 43 Eliz., and the 17 Geo. II. c. 38, § 8. The Act provides that any person who lets his house to a lodger or lodgers shall be taken to be the occupier, and shall be liable to be so rated or assessed, and that the goods of every person occupying any separate apartment should be liable to be distrained and sold for the payment of the rates. The warrants under which the defendant acted directed the goods of Duncan to be seized, and he was named in the warrants, which recited that he had been duly summoned, but had not shown sufficient cause why the warrants should not issue. The plaintiff objected to pay the rates upon the distress, and required the defendant to leave his apartments. The defendant said he must leave a man in charge of the goods, and if the money was not paid he must remain five days. He left the man in possession for a few hours, until the money was paid. It was

objected that the lodger's goods were not liable to be seized, at least without notice of the default of his landlord; secondly, that the warrants being against Duncan did not justify the seizure of the lodger's goods; thirdly, that it was not proved that Duncan had been summoned to pay the rates, which was necessary before the warrants were issued; fourthly, that the broker had no right to remain in possession after the seizure, as this was not like a distress for rent, but a species of execution. The defendant, besides relying upon the local Act and the warrant as a justification, also urged that there ought to have been a demand of a copy of the warrant; and therefore, by the 10 Geo. II. c. 44, § 6, the plaintiff could not recover. The Judge on the trial nonsuited the plaintiff.

A rule had been obtained to enter a verdict for the plaintiff, against which cause was shown, and the local Act was again relied on as authorising the distress upon the lodger's goods; secondly, it was answered that the warrants followed the language prescribed by the 43 Eliz., which gives the right of distraining the offender's goods, and the 17 Geo. II. c. 38, which authorises the distress upon the goods of the person assessed and refusing to pay; and that it would be impossible for the justices to insert in the warrants the name of the lodger; thirdly, that the warrants must be taken as conclusive evidence in favour of the defendant that Duncan had been summoned; fourthly, that the party had not remained longer in possession than was necessary for the securing the goods, and procuring their removal if that be necessary, as may be doubted from the language of the 27 Geo. II. c. 20, § 1. Lastly, it was argued that the plaintiff ought to have demanded a copy of the warrants.

In support of the rule it was urged that the defendant had exceeded his authority by remaining an unreasonable time on the premises, and therefore a demand of a copy of the warrant was unnecessary.

Alderson, B., after reading the clauses of the local Act, continued, "The goods and chattels of all the lodgers are

“ therefore liable ; they are to be deemed and taken to be the
 “ goods of the persons rated. Then the mere fact for the officer
 “ to ascertain is, who is the person rated, and having done so,
 “ he is to go to the house of the person rated, and, if he finds
 “ goods which belong to a person renting premises under the
 “ party rated, he may take them under the warrant, unless the
 “ warrant be informal. I think this is a good warrant. But
 “ before he can make any objection to it the party must first
 “ make a demand of a copy of the warrant. If he relies on the
 “ fact of the warrant having been issued without a previous
 “ summons, that objection can only be raised after a demand
 “ of the warrant, and in no case against the officer. That
 “ makes an end of the case.

“ But then there is no doubt that the party can only justify
 “ that which he lawfully did under the warrant. He has a
 “ right to stay a reasonable time before he removes the goods ;
 “ but here the officer said unless the money was paid he should
 “ stay the five days. Perhaps the excess of damage is trifling,
 “ but the case must go to the jury to ascertain whether there
 “ was any excess.”

Rule absolute for a new trial.

Robinson v. James. 11 L. J. R. (n. s.) Q. B. 237.

THIS was an action of debt upon the 96th section of the local Act 11 Geo. IV. c. 10, *for the better regulation of the affairs of the joint parishes of St. Giles-in-the-Fields and St. George Bloomsbury*, against the landlord of two houses for arrears of a poor-rate. By several clauses the landlords of houses of a certain value are made liable to be assessed to the poor-rate ; and by the 96th section it is provided that, in default of payment by the landlord, the same shall be and remain a charge on the land, and after 14 days' notice left on the premises may be recovered in an action of debt against the landlord. On a motion to arrest the judgment, it was held by Coleridge, J., in the Bail Court, that it was sufficient to allege that the defendant was the landlord at the time of the rate ; and it was not neces-

sary to allege that he was landlord at the time when the notice of the rate was given and default was made in payment, or when the action was brought, inasmuch as, having been rated, he continued liable to the action whether he continued the owner or not. He also held that it was not necessary to allege that there was no sufficient distress on the premises in respect of which the rate was imposed; because, this being a rate upon the landlord, the object of the legislature was that he and his property should be looked to primarily, and not the goods of the tenant occupying the premises. Therefore the sufficiency or insufficiency of the distress was immaterial.

Rule refused.

Appeal against Rate.

Q. v. Justices of Suffolk. 8 D. P. C. 618.

A POOR-RATE for the parish of Edwardstone was made on the 13th of October, 1838, and published on the 14th. The Sessions were held on the 23rd of October. By the practice of the Sessions eight clear days' notice of appeal was necessary, and nothing was done at those Sessions. At the following January Sessions, no notice having been given, the appeal was entered and respited; and at the ensuing April Sessions, due notice having been given, the appellant proposed to try the appeal, but the Sessions held that he was now too late, and dismissed the appeal.

A rule *nisi* for a *mandamus* to the Justices to hear the appeal had been obtained, against which it was argued that, though the appellant was not bound to try at the October Sessions, he was not justified in allowing two Sessions to pass by before he tried the appeal.

In support of the rule it was urged that, as no notice was given previous to the January Sessions, the Sessions were then bound, according to the construction put on the 17 Geo. II. c. 38, § 2, to respite the appeal, and, consequently, the next Sessions were bound to hear it.

Williams, J.—" * * * It is conceded that there was not

“ time to give notice of appeal for the October Sessions, and
 “ * * * in such a case entering and respiting the appeal is a
 “ mere idle act which causes expense to no purpose. The next
 “ Sessions has always been considered the next practicable
 “ Sessions. * * * Then comes this fact, that at the next prac-
 “ ticable Sessions no notice of appeal was given for that Ses-
 “ sions. It was then entered and adjourned, which was accord-
 “ ing to the provisions of the Statute. * * * But it is very
 “ questionable if a subsequent Sessions had any right to do
 “ more than to see whether there had been proper notice given
 “ for that Session. That was not the course adopted in this
 “ case; but the subsequent Sessions have determined that they
 “ would not hear the case at all, because their predecessors at
 “ the former Sessions have been mistaken in the course they
 “ adopted. But, however, I feel myself overpowered with the
 “ opinions of Mr. Justice Lawrence and Lord Ellenborough.
 “ The first practicable Sessions was the January Sessions,
 “ and the adjournment then was imperative under the Statute.
 “ * * * ”

Rule absolute.

Proper Application of different Parochial Rates.

Attorney-General v. Daniel and others. 9 L. J. R. (n. s.) Ch. 394.

UNDER various local Acts the vestrymen of the parish of
 St. Marylebone are empowered to raise five distinct rates in
 every year, viz. 1. poor-rate; 2. highway-rate; 3. watching-
 rate; 4. paving-rate; and 5. cleansing and lighting rate. They
 are authorized to borrow money on the credit of the rates,
 and any money borrowed on any particular rate is to be ap-
 plied in aid of that rate, and for no other purpose. They are
 also by other Acts authorized to collect a church-rate, burial-
 fees, and pew-rents, and apply the same in reduction of the
 money borrowed on the credit thereof.

An information was filed in Chancery against certain members
 of the vestry, alleging that all the rates received were blended
 together, and applied to all parochial purposes indiscriminately,

and that the vestry, to acquire influence and popularity, had not raised sufficient money to meet the annual expenses, but had incurred a debt with their bankers, and proposed to borrow a large sum of money on the credit of some of the rates, to be applied in reduction of the general debt due to the bankers.

On a motion, the Vice-Chancellor granted an injunction to restrain the vestrymen from borrowing the money on the credit of the several rates; from applying the moneys raised from the several rates, fees, and rents to purposes of parochial expenditure for which they belong; and from mixing and blending the pew-rents and burial-fees with the moneys arising from the rates and assessments. They were also restrained for a time from applying any moneys arising from, or borrowed on the credit of, the rates, in repayment to the bankers of the sum borrowed.

From this order there was an appeal to the Lord Chancellor, who decided that the first and last branches of the injunction could not be supported; that the last would prevent the vestry from applying the rates raised in 1840 towards the liquidation of any expenses incurred in 1839, or any advances made by the bankers in that year; whereas it could not be said that the vestry, on the construction of the Acts of Parliament, were acting illegally by making such payments; inasmuch as, although the object was to keep the expenses of one year within the current year, it was impossible, in transactions of the magnitude of those in this parish, exactly at the end of every year to square off the receipt and expenditure, and pay off any sum of money which might be due for the current year. The legislature must have contemplated this when they said that the rates shall be made in June and relate to January preceding. The accounts must run into two years on both sides of the account, if on one; and as the balance of what was received in 1839 was applicable to the service of 1840, so the receipt in 1840 might have been applied in discharge of the expenses in 1839.

In regard to the borrowing of the gross sum upon the gross result of all the rates, after observing that this intention had

been abandoned long since, his Lordship said, “ But it appears
“ to me * * * that it is not correct to apply or borrow on the
“ credit of one rate for the purpose of meeting the deficiency of
“ another ; and it is not correct to apply the produce of one rate
“ to paying the deficiency of another. They ought to be kept
“ perfectly distinct and separate. Whether it was intended to
“ borrow on the credit of one rate to pay the deficiency of
“ another, it is quite clear, to a certain extent, there was an
“ application of the produce of one rate to supply the deficiency
“ of the other, and that I apprehend to be contrary to the
“ provisions of the Act of Parliament ; and there are good
“ reasons why that should not be done, because, though it
“ might be in some particular cases convenient, yet it has a
“ tendency to raise money on some rates where it might be
“ more easily raised, in order to meet the deficiency of others ;
“ and that might fall harder on those persons who would have
“ to pay, and are liable to pay, the one, and not the other.”

His Lordship afterwards admitted that there was a difficulty in dealing with the case, as all the accounts are necessarily blended together, inasmuch as the rates are all collected together, and the amounts only separated after the sums are paid in : nevertheless, as the Act of Parliament was imperative, and there had been a trifling departure from the correct course in one instance, it was necessary that he should restrain the parties from applying the one rate to the purposes of the other.

The injunction was granted to restrain the vestry from applying the money arising from the pew-rents and burial-fees to any other purposes than those prescribed in the Acts of Parliament, and from applying the surplus arising therefrom, or from any other rates, towards making up the deficiencies arising on the proceeds of the other rates ; and the rest of the Vice-Chancellor's order was discharged.

MAINTENANCE OF RELATIONS.

Of Bastards—Application for order in Bastardy.

Q. v. Stamper and others. 1 A. & E. (n. s.) 119: S. C. 4 P. & D. 539 :
10 L. J. R. (n. s.) M. C. 73.

INDICTMENT against the overseers of the township of Nunnington for disobeying an order of the Quarter Sessions, whereby they were ordered to pay the costs incurred by one James Smith in resisting an application made by them to those Sessions for an order in bastardy, which order the Sessions did not think fit to make, and thereupon ordered the overseers to pay the costs. The order, which was set out in the indictment, alleged that the overseers had made an application for the order.

The indictment was tried before Parke, B., at the Yorkshire Spring Assizes, when it was proved that an entry had been made by the attorney of the defendants at the proper time, and according to the usual practice, in a book kept by the Clerk of the Peace, containing a list of the applications intended to be made for orders of maintenance in bastardy. An order of Sessions, made in 1835, was in force, that all applications *intended* to be made for orders of maintenance in bastardy be entered with the Clerk of the Peace on or before 12 o'clock at noon on Tuesday in Sessions, and no application should be received unless so entered, except on special application to the Courts, and such applications should be called on in the order of entry.

In the present instance notice of the intended application had been given by the defendants to the prosecutor, and his attorney was present at the Sessions. The case was called on as usual on the Wednesday after entry, but the overseers made no application to the Court.

The Judge thought that there was no evidence of an application made, but only of an intended application, and therefore the order was not warranted by the 4 & 5 Will. IV. c. 76, § 73,

but reserved the point for the consideration of the Court of Queen's Bench.

In support of his ruling it was argued, that the 4 & 5 Will. IV. c. 76, § 73, provides that if, upon the hearing of the application, the Court shall not think fit to make any order, it shall order the full costs incurred in resisting such application to be paid by the overseers. The jurisdiction to award costs is only given when such application is actually made and heard. Here no application was made at all. There is only evidence to show that an application was intended to be made. The order of the Justices states that an application was made; but such statement is not conclusive, and is shown not to be correct.

It was contended for the prosecution that the order sufficiently showed that an application had been made, and had not been rebutted. But if it be not conclusive, the entry made by the overseers was an application, and so the Sessions have considered it. Then the case was heard, though the overseers did not think fit to appear. They, having made their entry, could not withdraw from the Court without obtaining permission, or incurring the consequences of a nonsuit.

The Court took time to deliberate.

Lord Denman, C. J., after stating the facts, said—"We are
" of opinion that the entry with the Clerk of the Peace in this
" case was an application within the meaning of the Act of Par-
" liament, so as to give the Court of Sessions jurisdiction, and
" that the calling on of the case, and appearance of J. S. to
" resist the application, was a sufficient hearing. We consider
" the rule of Sessions as regulating the *mode of making appli-*
" *cation* to the Court, which, being a matter of practice, it was
" quite competent to them to regulate, and not as merely direct-
" ing a notice of intended application. The Court of Sessions
" have evidently put this construction upon their own rule, and
" we think it is the right one."

Verdict for the Crown.

*Notice of Application—by whom to be given. Effect of
Recognizance given under 2 & 3 Vic. c. 85, § 3.*

Q. v. The Justices of Wiltshire. 12 A. & E. 793: S. C. 4 P. & D. 406:
10 L. J. R. (n. s.) 17.

AN order of the Quarter Sessions recited that the parish of Trowbridge was in the Melksham Union, and that it had been certified to the Quarter Sessions that, at a Petty Session at Trowbridge, *the Guardians of the said Union* informed the said Justices, in Petty Session assembled, that a bastard child had become chargeable to the parish, and applied for an order to reimburse the parish, and that the party charged, having had due notice to appear at the Sessions, appeared, in pursuance of such notice, and declared his desire that the charge should be heard at the Quarter Sessions, and thereupon entered into a recognizance to appear and answer the charge, and pay all the costs incurred by the Guardians in bringing the charge before the Court. The order then proceeded to adjudge the party to be the putative father, and to pay a certain sum to the Guardians, as the expense theretofore incurred by them in the maintenance of the child, and a weekly sum in future. There was a further direction to pay the Guardians the sum of 52*l.*, being the costs incurred by them in bringing the said charge before the Court. A rule *nisi* had been obtained for bringing up this order into the Court of Queen's Bench by *certiorari*; and it was shown by affidavit that the notice of the application, signed by six Guardians, being all those who were present at a meeting of the Board of Guardians, was served on the party. It was not shown that due service of the notice was proved at the Petty Sessions, but no objection was taken at those Sessions in respect of this notice. No further notice was given by the Guardians before the hearing of the charge at the Quarter Sessions.

Four objections were taken to this order. First, there should have been fourteen days' notice of the intention of the Guardians to be heard at the Quarter Sessions, as, though Stat.

2 & 3 Vic. c. 85, § 1, makes seven days' notice sufficient before the Petty Sessions, it does not alter 4 & 5 Will. IV. c. 76, § 73, in regard to the Quarter Sessions. Secondly, the notice should have been signed by a majority of the Guardians of the Union, if at all; but it ought not to have been signed by the Guardians, but by the overseers of the parish. Thirdly, there was no proof at the Petty Sessions of any notice at all. Fourthly, no power is given to the Sessions to order payment of the costs.

In answer it was said that the recognizance of the party rendered it unnecessary to give any notice previous to the hearing at the Quarter Sessions; that the Guardians are, under the later Act, the proper persons to give the notice; and that, under the 3rd section, the party is required to bind himself to pay the costs; the Sessions must therefore have a jurisdiction to order the payment; if not, the order is only bad *pro tanto*.

Lord Denman, C. J.—“ * * * It is evident that, by 2 & 3
“ Vic. c. 85, the Justices in Petty Session have a discretion to
“ remit the hearing to the next Quarter Sessions, though the
“ interval may be less than fourteen days. It cannot therefore
“ be supposed that such notice was still to be given; nor is
“ there, in fact, any good reason why it should be given.
“ Next, as to the parties to the notice, we held, in *Q. v.*
“ *James*, 10 A. & E. 423* that a notice under the first
“ Act was sufficient when signed by the overseers; so here
“ the language of the Act will enable us to hold that it is
“ sufficient when given by the Guardians. As to the want of
“ proof of the seven days' notice required by the last Act, it
“ is enough to say that the defendant appeared before the
“ Petty Sessions, and did not insist on the want of notice, but
“ declared his desire to have the charge remitted to the Quar-
“ ter Sessions. Then, as to the award of costs, the omission in
“ the Act to give the Justices power to order payment of them
“ was probably inadvertent, but it is not given. The order,
“ however, is divisible, and must be quashed only as to that
“ part of it.”

* See vol. i. of this Abridgment, p. 163.

Littledale, J.—“ * * * The Guardians are authorised by
“ both Acts to make the application. It is said that the over-
“ seers are the parties interested, and not the Guardians.
“ Perhaps that may be so in the result, but the Guardians are
“ at all events immediately interested; and here the order
“ itself shows that the funds of the Union had, in the first
“ instance, been charged with the maintenance of the child.
“ Then, as to the want of notice, none is required for the hear-
“ ing at the Quarter Sessions. The defendant, being charged
“ at the Petty Sessions, chooses to take the case to the Quarter
“ Sessions. It is a voluntary option on his part, and not an
“ appeal. From that time the Guardians are bound to follow
“ up the case; and no further notice is required by the Act,
“ or can be necessary for the defendant’s benefit. Any objec-
“ tion that might have been made to the want of the seven
“ days’ notice was waived by his appearance, and by the steps
“ taken by him before the Petty Sessions, which fully appear
“ on the face of the order, even supposing the mere allegation
“ of due notice to be insufficient.”

Williams, J.—“ * * * * As to the proper parties to the
“ application, *Q. v. James* does not show that it may not be
“ made by the Guardians as well as by the overseers.”

Coleridge, J.—“ * * * The other objection, on the ground
“ of notice, is that no fourteen days’ notice was given, or is
“ alleged. But Statute 4 & 5 Will. IV. c. 76, is repealed as
“ to this notice. That Act (§ 72, 73) directed application to
“ be made to the Quarter Sessions after fourteen days’ notice
“ of it. The 1st section of 2 & 3 Vict. c. 85, enacts that
“ thereafter it shall not be lawful to make any such applica-
“ tion to any Court of General Quarter Sessions. The
“ Guardians, therefore, are not acting under the original
“ Statute, but under the last, with which they have duly com-
“ plied. Then it is said to be shown by the affidavits and the
“ order that the notice was by the wrong parties, and was not
“ properly signed even by the Guardians. If the want of
“ notice has been cured by appearance the objection falls to

“ the ground, unless the application itself ought to have been
 “ made by the overseers. But in *Q. v. James* the Court ap-
 “ pears to have thought that an application by the Guardians,
 “ even under the original Act, would have been sufficient. I
 “ entertain some doubt whether in that case the Guardians
 “ were not the proper parties to the proceeding. * * * But at
 “ all events, under Statute 2 & 3 Vict. c. 85, the Guardians
 “ are proper parties; and in this case the fund of the Union
 “ appears to have been charged. With respect to the costs of
 “ the application, § 73 of Statute 4 & 5 Will. IV. c. 76,
 “ authorises the Justices to order payment of them by the
 “ overseers or Guardians when the application is unsuccessful,
 “ but has not provided for the event of an opposite decision.”

Rule absolute for a *Certiorari*.

Q. v. Stoddart. 1 G. & D. 654: S. C. 10 L. J. R. (n. s.) M. C. 113.

IN this case the recognizance simply stated that the party appeared at the Petty Sessions, and declared to the Justices that he was desirous that the charge should be heard at the Quarter Sessions, and then entered into the recognizance. It was argued that the party could not be concluded, as he had not heard the charge at the Petty Sessions.

But the Court held that this made no difference, and that he was prevented from objecting to the notice.

Jurisdiction of Justices at the Petty Sessions.

Ex parte The Guardians of the Poor of the Wallingford Union. 9 D. P. C. 987.

CERTAIN parishes in Oxfordshire, Berkshire, and the borough of Wallingford, are included in the Wallingford Union. One of the Oxfordshire parishes is Warborough. A bastard child having been born there, and become chargeable, the Guardians of the Union applied to the Justices of the borough of Wallingford, which is wholly situate within the county of Berks, for an order of filiation, under the 2 & 3 Vict. c. 85, § 1. The Justices were of opinion that they had no jurisdiction, according to the provisions of that Statute.

A rule *nisi* for a *mandamus* to the Petty Sessions to hear the application had been obtained, it being contended that the Guardians might apply to the Justices holding Special or Petty Sessions for any division or borough within which the Union, or any part of it, was situate, and that here a part of the Union was situate within the borough of Wallingford.

Against the rule it was argued that this was an inconvenient construction of the Statute, as, if it were correct, it would be difficult to settle the appeal to the Quarter Sessions, which is given by the 3rd section, whether to the Oxfordshire or to the Berkshire Quarter Sessions. The meaning probably was, that the application should be made to the Sessions of the division in which the parish to which the child is chargeable may be situate.

Coleridge, J., after taking time to deliberate, said “ * * *
“ There will be great difficulty in construing these words (in
“ the 2 & 3 Vict. c. 85, § 1) with the literal strictness which
“ this application requires. By the 2nd section of the Act any
“ Justice of the Peace (the section in terms makes no limita-
“ tion) may summon witnesses to appear and give evidence on
“ the charge, and upon neglect or refusal may by warrant
“ cause them to be brought before him, and * * * may com-
“ mit them to any house of correction within his jurisdiction.
“ * * * If the borough magistrates proceed in this case, and
“ witnesses are required from Oxfordshire, are they to issue
“ their summons and warrant into that county, or must recourse
“ be had under the former part of the section to an Oxfordshire
“ magistrate to procure the attendance of the witness. * * *
“ It is not stated that there is any house of correction for the
“ borough, or properly within their jurisdiction; nor do we
“ know upon what terms, and for what purposes, they have
“ power to commit to the Berkshire house of correction. But
“ if they have power to do so in a case like the present, which
“ would seem very doubtful, there would be not a little hard-
“ ship in committing an offender from one county to the prison,
“ it may be, the remote prison, of another. Or is it to be con-

“ tended that a power is given, by implication, to the borough
“ Justices to commit for this purpose to the Oxfordshire house
“ of correction? Again: if under the 3rd section the party
“ charged shall decline the jurisdiction of the Petty Sessions,
“ and elect to go before the Quarter Sessions (the words in
“ the Act are unlimited, and specify no particular county), to
“ which Quarter Sessions are the borough Magistrates to send
“ the recognizance, to transfer the hearing of the case? * * *
“ I mention these difficulties, not as conclusive, nor as admitting
“ of no solution; but if the Statute presents another mode of
“ proceeding equally convenient, and entirely free from any
“ such difficulties, it would be a vain exercise of the discretion
“ of this Court to assist the applicants in their desire to pro-
“ ceed by this. Now there is nothing in the Act from which
“ an intention can be inferred to extend the local limits of the
“ jurisdiction of magistrates: the language of the section in
“ question seems rather framed with a contrary intention.
“ Even where a whole Union or parish is in one county, the
“ power to hear the application is not given to the magistrates
“ indifferently for the whole county, but is restrained to those
“ who act in the particular division; but when it specifies the
“ division or borough wherein any part of the Union or parish
“ is situated, that may be in order to carry out the same in-
“ tention, and to direct that the application *reddendo singula*
“ *singulis* should be made, where the Union was within more
“ than one county or division, to that bench within the juris-
“ diction of which the cause of complaint arose. Under 4 & 5
“ Will. IV. c. 76, § 72, no provision was made for the case of
“ a parish or Union being partly within the jurisdiction of one
“ and partly of another Quarter Sessions. Perhaps it was
“ intended to guard against the consequences of any similar
“ omission which under the present Statute might have occa-
“ sioned inconveniences of frequent occurrence, that the lan-
“ guage of this section was framed, but certainly not with
“ sufficient care. * * * But I do not intend, by the course I
“ now take, to decide absolutely the true construction of this

“ Act. I only say that, when so much doubt exists, and so
 “ much inconvenience may follow from giving it the construc-
 “ tion required to make this rule absolute, and where another
 “ construction may so well be maintained, and the course of
 “ proceeding upon that is so free from difficulty, I think I ex-
 “ ercise the wisest discretion in refusing the application.”

Rule discharged.

When the Quarter Sessions have no jurisdiction.

Q. v. The Justices of the West Riding of Yorkshire. *In re* Lees, 1 A. & E.
 * (n. s.) 325 : S. C. 4 P. & D. 668 : 10 L. J. R. (n. s.) M. C. 86.

THE parish officers of Kexborough applied on the 25th of March, 1840, to two Justices for an order of maintenance upon H. L., charged as the putative father of a bastard child, but no order was then obtained : a subsequent application was made to the same and two other Justices, when the case was heard, and, an objection being overruled, was adjourned. At the adjournment on the 6th of May the order was made. On the 18th of June H. L. gave notice of appeal to the Quarter Sessions, and entered into a recognizance to try it and abide the judgment. The Sessions refused to hear the appeal.

A rule *nisi* had been obtained for a *mandamus* to the Sessions to hear the appeal—

Against which it was argued that the Statute 2 & 3 Vict. c. 85, § 3, did not warrant the appeal to the Quarter Sessions, as the appellant did not decline the jurisdiction of the Justices at the Petty Sessions.

In support of the rule, § 103 of the 4 & 5 Will. IV. c. 76, was relied on as giving a right of appeal to the Quarter Sessions against every order made on the putative father of a bastard child, and that this provision extended to the new Statute, 2 & 3 Vict. c. 85.

The Court took time to deliberate.

Littledale, J., delivered the judgment.—“ * * * By the
 “ Poor Law Amendment Act, 4 & 5 Will. IV. c. 76, § 72, ori-

“ ginal jurisdiction is given to the Quarter Sessions to hear and
 “ determine applications for orders of filiation, and the four fol-
 “ lowing sections contain provisions for the regulation of their
 “ proceedings in such cases, and the limitation and enforce-
 “ ment of their orders. The 103rd section is the general ap-
 “ peal clause of the Act. * * *

“ It may seem extraordinary, and perhaps it was an over-
 “ sight, to give an appeal from one Quarter Sessions to an-
 “ other, but the words are too plain to leave any doubt that
 “ such an appeal existed under that Act; they cannot be satis-
 “ fied in any other way, and must not be cut out of the Act.”

His Lordship then read 2 & 3 Vict. c. 85, §§ 1 & 3.

“ The present was not a proceeding under this section, but it
 “ is not immaterial to consider whether any appeal lies for the
 “ putative father from the decision of the Quarter Sessions when
 “ the case has been brought there under it by himself. And
 “ we are of opinion that there is no appeal in such a case.
 “ An appeal must always be given directly, or by clear inference,
 “ from the language of the legislature. There is nothing in
 “ this Act which declares so, or from which it can be inferred.
 “ The provision that the proceedings should be before the
 “ Court of Quarter Sessions, *as if this Act had not been made*,
 “ will be fully satisfied if we understand by them those pro-
 “ ceedings at the first Court of Quarter Sessions to hear and
 “ determine the charge, and to enforce their order, which had
 “ been in force under Statute 4 & 5 Will. IV. c. 76, §§ 72-76.
 “ * * * Nothing, therefore, in the words of either Statute
 “ would compel us in the case supposed to infer any power of
 “ appeal to a subsequent Quarter Session; and certainly there
 “ is nothing in the way of policy or justice that should lead us
 “ to expect that such power would have been given in a case
 “ where the party has himself selected the tribunal; to say
 “ nothing of the general inexpedience of appeals from Sessions
 “ to Sessions.

“ The question, however, now is, whether, in a case where
 “ the party has not made the Quarter Sessions his Court of

“ original jurisdiction under the 3rd section, but has been con-
“ tented to abide the judgment of the special Sessions, under
“ the 1st section, he may appeal from their judgment to that
“ of the Quarter Sessions by virtue of the 103rd section of the
“ former Act. The general argument against such appeal will
“ be the same as we have just used, and the intention of the
“ legislature can hardly be doubted, the purpose of the Act
“ being, as stated in the preamble, to give more *speedy* and ef-
“ fectual means for obtaining filiation orders.

“ But reliance is placed on the following words in the first
“ section, ‘ and all enactments in the said Act relating to the
“ Court of Quarter Sessions shall be taken to apply to the said
“ Justices in Special or Petty Sessions.’ It is said that, as the
“ legislature by the said Act had given an appeal from the
“ Quarter Sessions to a subsequent Quarter Sessions, these
“ words, by a necessary inference, imply a similar appeal from
“ the Special or Petty Sessions. * * * The words, however,
“ are so general that they must receive *some* limitation in con-
“ struction. * * * What, then, is the restriction which ought
“ to be imposed upon them? We think this is to be learned
“ from the context in the clause itself, and from the general
“ purview of the Act. From the parts of the clause which
“ precede and follow the words, it is clear that the enactments
“ of the whole are directed to the hearing before the Special
“ Sessions, to the giving them jurisdiction, declaring their
“ powers and duties to be such as the Quarter Sessions had, by
“ the former Act, on the original hearing. And after the words
“ in question, which will be fully satisfied by being understood
“ with reference to such original hearing, follows this single
“ and remarkable exception, solely applicable to such original
“ hearing, ‘ that the notice, &c., need not be given more than
“ seven days,’ &c.; and then follows the prohibition to the
“ Quarter Sessions to make any order on such application.
“ Everything, therefore, in the clause preceding and following
“ the words relied on applies solely to the original hearing,
“ and we give those words their most reasonable and natural

“ interpretation when we understand them to apply to the same
 “ subject-matter.

“ We have already intimated our opinion that the same in-
 “ terpretation accords best with the general intention of the
 “ Statute. And, upon these grounds, we think the decision of
 “ the Quarter Sessions was right. * * *

Rule discharged with costs.

Jurisdiction of Quarter Sessions. Form of Order of Sessions.

Q. v. Justices of Hampshire. 9 D. P. C. 171 : S. C. 10 L. J. R. (n. s.)
 M. C. 22 (n.) 161.

Q. v. The Guardians of the Hartley Wintney Union. 1 G. & D. 732 :
 S. C. 1 A. & E. (n. s.) 677.

AN order of the Hampshire Quarter Sessions on December 31, 1839,—reciting the birth of a bastard child in the parish of Odiham, in the Hartley Wintney Union, which was chargeable to that parish ; that a notice had been given to the putative father of the intended application ; that such application had been made to the said Court for an order ; that S. R., the putative father had appeared thereat ; and that sufficient evidence was not adduced to support the charge,—ordered the full charges incurred by the said S. R. in resisting such application to be paid by the said Guardians.

A rule had been obtained for a *certiorari* to bring up this order to be quashed, on the ground that it was not shown that an application had in the first instance been made to the Petty Sessions, and the recognizance entered into as required by the 2 & 3 Vict., c. 84, §§ 1 & 3.

On showing cause, affidavits were tendered to prove that in fact the application was made to the Petty Sessions in the first instance, and the recognizance entered into ; but

Patteson, J., ruled that they could not be received, as he was bound to look to the order, and to that alone.

It was then contended that it was not necessary that these preliminary steps should be set out in the order, as the Court

would presume, in support of the jurisdiction of the Sessions, that they must have taken place.

Contrà, it was argued that sect. 1 of the 2 & 3 Vict. c. 84, entirely took away the jurisdiction of the Quarter Sessions, and that it only arose under sect. 3, upon the performance of certain acts. It was therefore necessary for the Sessions to show that those acts had been done. The order was also objected to as not showing that the mother was settled in the parish of Odiham, or was chargeable to that parish, or that the consent of the Guardians to the application had been obtained.

Patteson, J., observed that, "If it had appeared that the mother was not settled in the parish, or that she was not chargeable, or that the consent of the Guardians to the making of the application to the Sessions had not been procured, that might have been a ground for refusing to make an order upon the putative father, but those are matters which could be of no importance since the order was refused."

He reserved his judgment on the other point for consideration: afterwards in the same term he delivered judgment.

After citing the 4 & 5 Will. IV. c. 76, §§ 72 and 73, and the 2 & 3 Vict. c. 85, §§ 1 and 3, he continued—

"The effect of these enactments clearly is, to give authority to the Court of Quarter Sessions only under certain circumstances and on certain conditions. The existence of those circumstances and the performance of those conditions do not raise a mere question whether a party has put himself in a situation to be heard at the Quarter Sessions, but a question as to the jurisdiction of the Quarter Sessions. In the present case the circumstances existed and the conditions were performed, as appears by affidavits. But it is contended that those affidavits cannot be received, and that the order of Quarter Sessions must on the face of it show all that is necessary to give the Court jurisdiction. The order does not show that. * * * It is in the same form as if the Quarter Sessions had general original jurisdiction under 4 & 5 Will. IV., not a jurisdiction arising out of the transmission of the

“ recognizance, &c., under 2 & 3 Vict. Such being the state
 “ of facts, I am of opinion that the writ of *certiorari* should go.
 “ I cannot find any distinction between orders by justices *in*
 “ Quarter Sessions and *out* of Quarter Sessions. In either case
 “ the order must show upon the face of it that they have juris-
 “ diction. Now, the Statute 2 & 3 Vict. expressly enacts that
 “ they shall not have authority unless the case be transmitted
 “ to them from the Petty Sessions. They should therefore have
 “ stated in their order that it was so transmitted.”

Rule absolute.

The *certiorari* having issued, the order was brought up, and the case was argued again in the full Court, when

Lord Denman, C. J., said, “ That the Court fully agreed in
 “ the judgment which had been already pronounced by *Mr. J.*
 “ *Patteson.*”

And the order was quashed.

Form of Order of Sessions.

Q. v. Taylor. 9 D. P. C. 600.

AN indictment for disobeying an order of the Quarter Sessions, made on the 21st of October, 1835, to pay for the maintenance of a bastard child, after alleging that the child was born on the 24th of December, 1834, averred that the Court ordered the said W. T. to pay the sum of 12*s.* 6*d.*, to reimburse the township the actual expenses incurred in the maintenance of the child from the time of its birth, and so long as the child continued chargeable, and until it was seven years old, weekly to pay the sum of 2*s.*, to reimburse the township for its support.

It was moved to quash the indictment as defective, inasmuch as the Sessions could only by the 4 & 5 Will. IV. c. 76, § 73, order the maintenance during the six months previous to the hearing; whereas it appears that the 12*s.* 6*d.* was for the expenses since the birth, which was a longer period than six months; secondly, the Sessions had ordered the sum of 2*s.* to be paid absolutely, although the actual cost of the maintenance might not amount to that sum.

It was answered, that the date of the birth was only stated by way of inducement, and that the order did not necessarily mean that more than six months' maintenance was awarded; and in regard to the second objection, that nothing more was meant by the order than that the actual costs incurred by the maintenance of the child should be made good.

Wightman, J., expressed an opinion that the order was defective as to the sum of 12s. 6d., but refused to quash the indictment, leaving the defendant to demur.

Rule discharged.

Payment of Costs by Defendants cannot be ordered.

See *Q. v. Justices of Wiltshire*, *ante*, page 108.

Execution of Warrant in Bastardy under the former Law.

Atkins, v. Kilby and Wyatt. 4 P. & D. 144: S. C. 11 A. & E. 777: 9 L. J. R. (n. s.) M. C. 32.

TRESPASS for false imprisonment. The defendants were constables, who had apprehended the plaintiff under a warrant of a justice for his commitment to prison, for not paying the arrears on an order of affiliation and maintenance. The warrant expressly required the constables to carry him to gaol, and the gaoler to keep him there until he paid the sum mentioned therein. On the way to the gaol the plaintiff tendered the amount to the constables, who refused to take it, because he did not tender the expenses of his apprehension, and because the warrant did not authorise them to do so. The plaintiff paid the amount to the gaoler at once.

Several points arose in the case, and among others the question whether the defendants were justified in such refusal. A verdict was taken for them at the trial, and, a rule to enter a verdict for the plaintiff having been argued in the Court of Queen's Bench, that Court took time to consider; and

Lord Denman, C. J., in the course of the judgment said,—
“The only remaining question is, whether the defendants
“acted in obedience to the warrant. Now the warrant re-

“ quired them to convey the plaintiff to the Bridewell, and there
 “ deliver him to the keeper thereof. They had no authority to
 “ discharge him, or to receive the money at any intervening
 “ place.” * * *

Rule discharged.

Desertion by a Mother of her Bastard not within the Vagrant Act.

Q. v. Maude, Esq. 11 L. J. R. (n. s.) M. C. 120 : S. C. 2 D. P. C. (n. s.) 58.

ONE of the relieving officers of the Manchester Union applied to the defendant, a magistrate, to commit one Anne Moseley, a single woman, as a rogue and vagabond, under the 5 Geo. IV. c. 83, § 4, for running away and leaving her female bastard child chargeable to the township of Manchester. The magistrate declined to do so. A rule for a *mandamus* to the justice to hear and determine the complaint had been obtained, against which

It was contended that the term *child* in the section of the Vagrant Act could only mean a legitimate child, and, consequently, the present case was not within it.

In support of the rule it was argued that there was no reason why this distinction should be made, the desertion of a bastard being as great an offence as that of a legitimate child.

The Court took time to consider.

Wightman, J., afterwards delivered the judgment of the Court.
 “ * * * The question to be determined is, whether a bastard
 “ was included under the word ‘child’ in the Act of Parliament.
 “ By the 4th section of the Act certain persons are to be deemed
 “ rogues and vagabonds, and amongst them ‘every person
 “ running away and leaving his wife, or *his* or *her child* or
 “ children, chargeable to the parish.’ It was argued, in sup-
 “ port of the rule, that, although in cases of tenure the word
 “ child is to be understood a legitimate child, it is not to be
 “ so considered where the object of the law is to punish or dis-
 “ able.

“ * * * It will appear that the 5 Geo. IV. c. 83, is not the
“ first Statute in which the same, or very nearly the same,
“ words are used in describing a class of persons who are to be
“ deemed rogues and vagabonds. By the 3 Geo. IV. c. 40,
“ § 3, all persons who run away and leave their wives and
“ children chargeable to the parish are to be so deemed; and
“ by the 17 Geo. II. c. 5, § 2, all persons who run away, and
“ leave their wives and children, *whereby they become* charge-
“ able, are to be deemed rogues and vagabonds. In all these
“ Statutes the words are nearly the same, wives or children,
“ and by placing them together it would seem without more to
“ indicate that the Legislature intended legitimate children,
“ and not bastards; and for nearly a century these words have
“ been so used, and in those Statutes have been so considered;
“ and there is no instance to be found of any attempt to apply
“ those words to illegitimate children. * * * I am, therefore,
“ disposed to think that a bastard child is not within the mean-
“ ing of the word child, as used in this Act. It is no further
“ necessary to refer to the Acts of Parliament relating to puta-
“ tive fathers and mothers of bastards than to observe that
“ distinct provisions are made for the maintenance of bastard
“ children, and compelling the parents to provide for them;
“ and that in all such Statutes bastards are described in terms
“ as such; and that in the Poor Law Amendment Act, where
“ the word *child* is used, as in section 56, a legitimate child is
“ clearly intended; and that, where the word is intended to have
“ a more extensive signification, it is expressly so declared, as
“ in section 57, by which the husband is made liable to main-
“ tain the children of the wife before marriage, whether legiti-
“ mate or illegitimate. * * * ”

Rule discharged.

RELIEF OF PAUPERS.

Pauper Lunatics—What Justices are to make the order for Payment of Cost of Maintenance.

Q. v. Darton. 12 A. & E. 78: S. C. 3 P. & D. 483: 9 L. J. R (n. s.) M. C. 78.

Two Justices made an order under 9 Geo. IV. c. 40, as follows:—

“Whereas A. C., of Woolley, &c., being a person insane,
 “lunatic, and dangerous to go abroad, was, on the 29th day of
 “August last, removed to, and confined under an order of two
 “Justices in the Lunatic Pauper Asylum at, &c., and whose
 “legal settlement, after due inquiry made and satisfactory evidence obtained, is at Darton; therefore we, two, &c., do
 “hereby adjudge the legal settlement of her to be in the said
 “township of Darton; and whereas it has been proved before
 “us upon oath that the sum of 6*l.* 13*s.* hath been incurred by
 “the township of Woolley in the removing, maintenance, and
 “care of the said A. C., the insane person, to the Lunatic
 “Pauper Asylum aforesaid, we do therefore order and direct
 “the overseers of the poor of the township of Darton, to which
 “place the last legal settlement is ascertained and adjudged to
 “belong, to pay the sum of 6*l.* 13*s.* to the overseers of Woolley
 “aforesaid, on demand.”

The Sessions, on appeal, confirmed this order, which, together with the order of Sessions, had been brought up by *certiorari*, and was objected to on two grounds:—

First, assuming that the order was made under the 9 Geo. IV. c. 40, § 38, it was retrospective, as it provided for the cost which had been incurred in the maintenance of the pauper prior to its date. Secondly, if it was made under section 42 it is defective for not showing that the settlement had not been ascertained by the Justices who made the first order, or that the charges had been incurred within twelve calendar months. It was also urged that the payment should have been made to the county treasurer.

In support of the order it was urged that there was nothing

to show that the order of August 29 did not warrant the order in question, as it had not been brought up, and therefore the Court would intend that the present Justices had jurisdiction. That it was fairly to be inferred that the costs ordered to be paid did not exceed the maintenance for twelve months, and that the Justices who made the order were those who had inquired into the settlement.

Patteson, J., observed that—"The 42nd section of the Statute does not enact that the expenses shall be first paid by the overseers, where the settlement is not known. Their duty in such a case is not to pay, but to let the magistrates make a proper order."

Lord Denman, C. J.—" * * * Statute 9 Geo. IV. c. 40, § 42, enacts that the same Justices who make the order for repayment shall have inquired into the settlement, and done all things necessary to such inquiry. Now in this case it does not appear that the Justices who made the order had the proper parties before them, and made the requisite inquiry. The order is therefore bad. * * *"

Patteson, J.—"This is clearly a bad order under section 38. And section 42 comes into operation only where the settlement is discovered after the pauper has been sent to the asylum. The persons who are then to act in ordering repayment are the Justices who inquired into the settlement. This order does not say before whom the evidence was taken, and the inquiry had. * * * And I think that the magistrates cannot in any case order payment to be made to the overseers of the removing parish. If the place of settlement is known, an order for the expenses may at once be made upon the overseers of the place of settlement, under section 38; if unknown, it may be made upon the county treasurer. If the overseers do not choose to obtain either order it is their own fault. The order for repayment must be made upon some one who was legally obliged to pay at first. That seems in the present case to have been the county treasurer."

Order quashed.

*Removal of Paupers.**Form of Order.*

Q. v. All Saints, Newcastle-upon-Tyne. 1 A. & E. (n. s.) 428: S. C. 1 G. & D. 133: 10 L. J. R. (n. s.) M. C. 89.

AN order of two Justices removed J. T., wife of G. T., and her son Robert; and the question was, whether J. T. and her son R., having independent and different settlements, can legally be included in, and removed by, the same order. The Sessions confirmed the order.

Against the order of removal it was argued that two families could not be removed by one order, and that this case was in effect the same. There would be a difficulty as to costs if one removal were good and the other bad.

Lord Denman, C. J., observed—"Suppose a child were removed with the parents as part of their family, it might be shown by evidence that the child was emancipated, and had a different settlement from theirs; but that would not be an objection to the whole order. Part of the order might be quashed; and I see no difficulty in apportioning the costs."

In support of the order it was urged that, though the form was unusual, it was not altogether unprecedented, and not unlawful.

Lord Denman, C. J.—" * * * It is not very expedient to change the usual form of proceedings; but if we are called upon to decide that such an order as this must necessarily be bad in point of law, I cannot say that it is."

Order confirmed.

Examination—Jurat.

Q. v. Silkstone. 12 L. J. R. (n. s.) M. C. 5: S. C. 2 G. & D. 396.

THE caption of the examination of one of the witnesses before the Justices who made an order of removal alleged it to have been taken "before *me*, one," &c., and the jurat was as follows:—"Sworn before *me* the day and year first above written; and *I* do hereby certify that the above examination

“ was read over and explained to the said examinant previously
“ to her being sworn thereto, who appeared perfectly to under-
“ stand the same. *W. B. Martin, H. Watkins.*” The notice
of appeal alleged that the examination, though signed by two
Justices, *purported* to be taken before one. The Sessions held
that the examination was defective on this ground, and quashed
the order.

In support of their order it was argued that the jurat showed
that the examination was taken before one Justice, and there
was no evidence that it was in fact taken before two.

Against the order it was contended that the ground of appeal
did not raise any question as to the real fact; and that, as it
might be inferred from the examination itself that two Justices
were present, the Court would treat the use of the singular
number instead of the plural as a mistake.

Lord Denman, C. J.—“ This question has arisen entirely
“ from the magistrates having neglected to comply with the
“ usual practice in drawing up the examination. The objec-
“ tion is very clearly taken, and was pointedly relied on at the
“ trial of the appeal. * * * I think, when we consider that the
“ taking of the examination was a judicial act which could not
“ be legally performed unless by two magistrates, and that the
“ examination and jurat cannot be said to do more than make
“ it doubtful whether they state the examination to have been
“ taken by two magistrates or one, that we may safely call in
“ aid the presumption of *omnia rite, &c.*, and hold the exami-
“ nation good.”

Williams, J.—“ I have certainly considerable reluctance in
“ coming to the same conclusion, and very much doubt the
“ utility of upholding this examination. * * * It is argued
“ that the language of the jurat, even supposing it plain, is not
“ to be considered conclusive against the admission of the ex-
“ amination. That I do not think. There is no evidence as
“ to how the examination was really taken; and I much doubt
“ whether, if such evidence had been tendered, it would have
“ been admissible to contradict the jurat. It is therefore, at

“ least, open to doubt, whether the Sessions were not right.
 “ However, we may, I think, ground our decision upon the
 “ reason that it was evidently the understanding of the parties
 “ that the proceeding was rightly had in fact, though wrongly
 “ described in form. That the ground of appeal seems to ad-
 “ mit: it seems to state the objection simply as on the ground
 “ of form, allowing that in reality the examination was taken
 “ before the two. Then the language of the jurat being ambi-
 “ guous, the presumption of *omnia rite acta* may prevail.”

Coleridge, J.—“ * * * We must look at the document as
 “ lawyers, and give it the benefit of a fair presumption. Now the
 “ words ‘ I ’ and ‘ me ’ may be read as referring respectively
 “ to each of the individuals who sign the jurat. This affords a
 “ foundation for the presumption *omnia rite acta*, * * *
 “ which seems to apply peculiarly to such a case as the pre-
 “ sent. Otherwise there must have been an assumption of
 “ illegal authority, at least, by one of them, and a fraud prac-
 “ tised, at all events, in both signing.”

Wightman, J.—“ The jurat is signed by two, but the first
 “ person singular is used in it; we cannot say to which of them
 “ it applies. It may be presumed, referring it separately, that
 “ it applies to each and both.” * * *

Order of Session quashed.

*Examination—sufficient, as to the competency of Witness
 examined.*

Q. v. Altermum. 1 G. & D. 261: S. C. 10 A. & E. 699: 10 L. J. R. (n. s.)
 M. C. 46.

THE only examination relative to the chargeability was that of the pauper's father, described in the examination as a prisoner in the gaol at Bodmin. One of the grounds of appeal was that the examination was void, the party examined being at the time when it was taken a convicted felon.

The appellants tendered the conviction in evidence to sup-

port this objection; but the Sessions refused to admit it, and confirmed the order.

In support of their order it was argued that the objection to the competency was not taken before the Justices who made the order, nor did it appear to have been known to them. Now an objection to the competency of a witness must be taken when his testimony is tendered, as afterwards it comes too late. The examination would not be evidence at the Sessions; and if the witness were called there, the objection might then be taken to his testimony.

Contrà, it was contended that the examination must show every material fact to give the Justices jurisdiction. For this purpose chargeability must be shown, and that was not done by the evidence of a convicted felon.

Lord Denman, C. J.—“ * * * I think the Justices were
“ bound to take the examination of the witness, though a pri-
“ soner at the time, unless it was brought to their knowledge
“ that he was then a felon convict. He might have been a
“ prisoner without being a convicted felon; and the fact that
“ he was so ought not to invalidate the examination, unless it
“ appear * * * that the Justices knew the fact. * * * Here
“ everything is shown necessary to give the Justices jurisdic-
“ tion, and they were bound to make the order. If the wit-
“ ness had been called at the Sessions, a valid objection to his
“ competency might certainly have been made. * * * ”

Littledale, J.—“ The fact of the witness being in prison
“ might have suggested to the Justices to make an inquiry
“ whether he were a convicted felon or not; but it does not
“ appear that they made such an inquiry, or were in any man-
“ ner made acquainted with the fact. The examination is per-
“ fect as far as it went; and the case is the same as it would be
“ if the Justices had proceeded on the testimony of persons who,
“ it was afterwards found out, were interested.”

Patteson, J.—“ * * * The examination is good on the
“ face of it. Though it states the witness to be then in gaol,

“ he might have been merely committed to take his trial. * *
 “ I think proving at the Sessions that the witness was a con-
 “ victed felon is not enough : it must be shown that the magis-
 “ trates knew it.”

Coleridge, J.—“ * * * The general presumption is in favour
 “ of the competency ; and the incompetency must be proved.
 “ Unless clear proof was given of the conviction and judgment,
 “ the witness was competent at the time this examination was
 “ taken. * * * ”

Order of Sessions confirmed.

*Examination—Insufficient, as containing only hearsay
 evidence.*

Q. v. Eccleshall Bierlow. 11 A. & E. 607 : S. C. 1 G. & D. 160 : 10 L. J. R.
 (n. s.) M. C. 90.

ON the removal of a pauper, the examinations of his father and himself were sent with the order of removal. The father said,
 “ I am sixty-two years of age, and was born at Doncaster, but
 “ the place of my father’s settlement was at Eccleshall Bierlow,
 “ *as I have heard him say*, and believe to be true ; and *I have*
 “ *heard my father say* that he has had relief from the over-
 “ seers of Eccleshall Bierlow. I never did any act in my own
 “ right to gain a settlement.” He then stated the fact of his
 marriage, and that the pauper was his son. The pauper him-
 self said, “ I am thirty-two years of age, and was born at Caw-
 “ thorne, but the place of my father’s settlement, *as I have*
 “ *heard him say*, and believe to be true, is at Eccleshall Bier-
 “ low.” He then stated the fact of his marriage, and the birth
 of his children.

The order was appealed against, on the ground that the examinations were defective. The Sessions, however, overruled the objection, and confirmed the order.

In support of their order it was argued that it was no ground of appeal against an order of removal that the evidence upon which it was made was *hearsay* only. The 4 & 5 Will. IV.,

c. 76, § 81, never intended to make any alteration in the practice of appeals in this respect, and previously it was never a ground of appeal that the removal was made upon insufficient or inadmissible evidence, nor were the Sessions precluded from receiving other or additional evidence. Under the Statute of 13 & 14 Ch. II., c. 12, the Justices might have removed the pauper upon their own knowledge. They have come to a conclusion upon a matter over which they have jurisdiction; and this Court will not take notice of the medium of proof by which they came to their decision. The new Statute only requires all the information to be sent upon which the Justices in their discretion made the order. If this objection prevail, great difficulty will be thrown upon parishes, for some irregular evidence is almost sure to be received, and, as all must be sent, an appeal will generally be successful. It will be incumbent on the removing justices to obtain attesting witnesses to documents; to reject such documents when unstamped; to require proof by distant witnesses on facts not disputed or doubted; and this though they have no compulsory process against any witness. And an order quashed on such grounds will conclude the parish. The only party before the Justices, besides the complaining parish, is the pauper, and his admission concludes him.

Lord Denman, C. J.—"The removal of the pauper should be grounded on legal evidence. It is contended that his statement is at all events legal evidence against himself: but the answer is, that he is not a party within the rule that makes such admissions evidence; and if he were, this is not an admission of a fact known to himself, but only a statement of what he heard another say."

Patteson, J.—"The parishes are the parties, and not the pauper: if he were a party in the sense contended for, a simple admission by him that he was settled in the appellant parish would be a sufficient ground of removal, yet it was conceded that an examination disclosing nothing more than that would not have warranted his removal. The argument of hardship seems to me to have no weight, for sooner or

“ later legal evidence must be produced, and there appears no
 “ good reason why the burden of ascertaining the truth of facts
 “ stated upon insufficient evidence should in the first instance
 “ be thrown upon another parish. It is right therefore that
 “ the appellants should be able to object that the removal has
 “ been made on no sufficient grounds. If the defect can be
 “ cured, *the respondents can abandon their order and make*
 “ *another.*” *

Williams, J.—“ This is in substance a removal without any
 “ evidence at all.”

Order quashed.

Q. v. Tetbury. 11 A. & E. 615, n. (a.): S. C. 1 G. & D. 166, n.

THIS case was decided by the Court on the same day, and on the same ground, and the above case was held to be conclusive. In the course of the argument *Lord Denman, C. J.*, observed, “ We have not said that the admission of *some* improper
 “ evidence will be a ground for quashing an order: I should
 “ be slow to hold that.”

Q. v. Lydeard St. Lawrence. 11 A. & E. 616: S. C. 1 G. & D. 191: 10 L. J. R. (n. s.) M. C. 147.

A PAUPER was removed upon the examinations of her husband and her husband's father. Her husband, who was confined in gaol for felony, stated that he was born in Lydeard St. Lawrence, *as he had heard and believed*; had done no act to gain a settlement on his own account, and that he had in the previous January been removed to that parish, the last legal place of settlement of his father, *as he had heard and believed*. The father stated, among other things, as follows:—“ I was born
 “ in the parish of Lydeard St. Lawrence, as *I have heard*
 “ *and believe*. I was bound apprentice by indenture with
 “ John Hurley, of Fitzhead, shoemaker; but it was agreed in
 “ the indenture that I should serve the last forty days of my
 “ apprenticeship in the parish of Lydeard St. Lawrence; and

* See *post.*, page 142.

“ I served the last forty days of my apprenticeship in Lydeard St. Lawrence, with Aaron Hurley, my master’s father.”

The grounds of appeal in general terms negatived the settlement in Lydeard St. Lawrence, and stated that it did not appear when or in what manner the pauper became settled in Lydeard St. Lawrence. The facts of the father’s apprenticeship and service for the last forty days in Lydeard St. Lawrence, under the indenture, or with the consent of the master, were denied: and it was also objected that it does not appear in either of the examinations that the father served Aaron Hurley, with the consent of John Hurley, or in any other manner under any indenture of apprenticeship; nor when, or by whom, or for what term, he was bound; or which John Hurley of Fitzhead was described; or the existence of John Hurley at Fitzhead, and of Aaron Hurley at Lydeard St. Lawrence, at the time of the order; and *that the examinations are too general, and are wanting in sufficient particularity in each of these last-mentioned respects.* It was lastly objected that no examination had been sent, setting forth, *upon oath of any credible witness*, when or where the son was born, nor his age.

It was proved on the trial of the appeal that the father had served Aaron Hurley under a valid indenture in Lydeard St. Lawrence, with the consent of his master, and that the son was born in Lydeard St. Lawrence. The Sessions overruled the objection that this evidence was inadmissible.

In support of their order it was argued that the objection urged to the settlement of the father by apprenticeship, namely, the want of evidence of the consent of the master to the service in Lydeard St. Lawrence, was not open to the appellants. The statement of the grounds of appeal do not point out the omission of any ingredient in the settlement, but only that the settlement is not stated with sufficient particularity, as to which the Sessions are to judge.

Coleridge, J., observed, “ The Sessions can exercise that judgment only when there is a fact stated: if the fact be not

“ stated at all, the want of particularity cannot be understood
“ to apply to such a fact.”

If the consent must be stated, it is alleged, though not technically. It is alleged in the indenture that the service should be performed, as it was in fact, and the examination, having stated it, goes on—“ *and* I served the last forty days,” &c. The word *accordingly* would have made all correct, and may be easily supplied. The omission of the date is a want of particularity which the Sessions thought unimportant. Then as to the birth settlement of the husband. The objection is not raised by the statement, which only points to the credibility of the husband, who was confined for felony. But if it be so, still the examination is sufficient. The husband states the fact of his birth in Lydeard St. Lawrence, though he adds that he had heard and believed it. Now it is not objected that the evidence was *hearsay* only; and if the Justices proceeded to make the order upon insufficient evidence, there is nothing to prevent the Sessions from hearing additional and strictly legal evidence. To hold this to be a valid objection will be very inconvenient, as the Justices cannot summon witnesses or compel the production of documents. Before the Statute 4 & 5 Will. IV. c. 76, no question was ever raised at the Sessions as to what evidence was received by the removing Justices, and that Statute makes no alteration in this respect. If the order be quashed upon this ground, there will be no power of removing this pauper hereafter to the appellant parish, and the respondents will be fixed.

Lord Denman, C. J.—“ I think the appellants have given
“ the notice of the grounds of objection required by the Act,
“ and that the objection ought to have prevailed. * * * The
“ consent of the master to the service is not stated, and the
“ objection to the want of such statement is properly made.
“ Then as to the birth settlement. * * * It is said that, when
“ we look at the notice of objections and the view which the
“ appellants appear to suggest, the objection to the evidence
“ received having been on *hearsay* is not properly raised. I

“ think it is. If there be no evidence but hearsay, there is in
 “ effect no evidence at all, and therefore no evidence upon the
 “ oath of any credible witness. Where a witness states that
 “ such and such facts exist, ‘as I have heard and believe,’ and
 “ that is the *only* evidence of the facts before the removing
 “ Justices, the Court of Appeal cannot receive evidence of the
 “ facts at all. It is argued that loose evidence may be received
 “ before the Justices, and afterwards, on appeal, the defect be
 “ made good by proper evidence; but I think that, when the
 “ evidence taken before the removing Justices is questioned,
 “ the objection to it, if valid, must prevail, whatever inconve-
 “ niences follow. I do not believe that any inconveniences will
 “ follow. *Justices may compel the attendance of witnesses*
 “ *within their jurisdiction; and if a difficulty arose from the*
 “ *witnesses being out of the jurisdiction, this Court could*
 “ *supply the defect.* * * *

Patteson, J.—“ The examinations here are open to many
 “ objections, and the notice sufficiently draws the attention of
 “ the respondents to them. *They might easily have withdrawn*
 “ *the order of removal,** and have supplied the defect by obtain-
 “ ing sufficient evidence; but as they chose to go on, they
 “ must abide by the examination. * * * The objection made
 “ to the birth settlement is, that it is not proved on the oath of
 “ a credible witness. The objection, if contemplated, that the
 “ witness was a convict felon, is not raised by the notice of objec-
 “ tions. We must take it to be that there was not legal evidence
 “ when or where the husband was born. The Justices had in
 “ their hands the means of inquiring, because the husband’s
 “ father was present. Besides, no date was given to the inden-
 “ ture. I do not say that whenever an indenture is stated the
 “ date must be given, yet here the importance of the date
 “ appears from this, that there is no legal impossibility, though
 “ much improbability, in an apprenticeship of the father com-
 “ mencing after the son has been emancipated. * * * I feel
 “ very strongly that by holding most strictly the necessity of a

* See *post.*, page 142.

“ proper examination we shall keep the Justices to regularity,
“ and shall thus prevent a pauper from being removed merely
“ because he appears before the Justices and says he has a
“ settlement.”

Williams, J.—“ * * * No peculiar relaxation of the rule
“ which excludes hearsay evidence exists in the case of proof
“ of birth. * * * A statement by a person that when he first
“ recollects he was living in any place is no proof that he was
“ born there. * * * I am of opinion that the intention of the
“ Act was that all practicable particularity should be given
“ to the examination.”

Coleridge, J.—“ * * * When the objection is that the state-
“ ment of the facts of the settlement is not sufficiently par-
“ ticular, they must be stated in some way or other, and then
“ only it is that the Sessions are called on to judge whether
“ there is sufficient particularity. * * * In the present case no
“ sufficient ground of removal is stated. As to the apprentice-
“ ship, the notice of objection points specifically to the want of
“ allegation of consent by the apprentice’s master. It is true
“ that afterwards there is an objection to the want of particu-
“ larity, but that does not do away with the objection before
“ specified. * * * But it is argued that the magistrates may
“ remove on hearsay evidence of birth. To this I cannot agree.
“ I will not lay down a general rule; but suppose this man to
“ have been the only witness, and to have merely said, ‘I have
“ heard that I was born in that parish,’ clearly that would not
“ do. It is argued that we should not apply the strict law of
“ evidence to cases determined before such a tribunal as that
“ of the two removing magistrates. I cannot enter into a
“ discussion as to the inconveniences which may arise, such as
“ that of the inability to summon witnesses. That is a question,
“ not for us, but for the legislature. Suppose some other fact
“ to be in question, an apprenticeship for instance, and the
“ parties applying for the order of removal to say that they
“ had asked the master to attend, who had refused—would it
“ then be enough for them to state what the master had been

“ heard to say? Here then is a necessary fact not legitimately
 “ proved. I limit myself to the case now before us: I do not
 “ say whether, if there were other sufficient evidence warrant-
 “ ing the removal, the admission of improper evidence would
 “ vitiate the order; at present my opinion is that it would
 “ not.”

Order quashed.

Q. v. Rishworth. 1 G. & D. 597: S. C. 11 L. J. R. (n. s.) M. C. 34.

THE pauper in her examination said, “ I am 28 years of age,
 “ and was born illegitimate at Stayley, in Cheshire.” The
 appellants objected in their grounds of appeal that no legal
 evidence of a birth or settlement in Stayley was disclosed on
 the examination, the evidence therein set forth being only
 hearsay.

The Sessions held that the respondents could not give other
 evidence of the settlement, and quashed the order.

Against their order it was contended that if the particulars
 of the settlement were given in the examination it would suffice,
 and that the evidence need not be set forth. Here the party
 deposed positively to a birth settlement. If great strictness of
 proof before the Justices is to be required, provision must be
 made to compel the production of such evidence, and to allow
 the costs attendant upon it. Great difficulties will follow such
 a rule. It was also contended that hearsay evidence of the
 place of birth is admissible.

Lord Denman, C. J.—“ This appeal depends upon the
 “ sufficiency of the examination. Distinct notice has been
 “ given of the particular objection to it. In the first place,
 “ does this examination show that the order of removal was
 “ made upon hearsay evidence? Of that there can be no
 “ doubt: the pauper speaks of that which cannot be within her
 “ own knowledge, viz. to the fact of her having been born illegiti-
 “ mate at a particular place. * * * The Poor Law Amend-
 “ ment Act has not introduced any change into the kind of
 “ evidence upon which removals may be made; but, by re-
 “ quiring the examination to be handed over to the parish

“ removed to, has laid open the evidence, and made it necessary
 “ for us to determine whether an order resting upon no legal
 “ evidence is good. I think an order of removal, and any
 “ other order of Justices, is invalid, if not founded on legal
 “ evidence. * * * Undoubtedly the practice has hitherto pre-
 “ vailed of removing paupers upon very loose evidence; but
 “ still, whatever the practice may have been, when once such
 “ proceedings are brought into Court they must be tested by
 “ legal principles. There may certainly be some difficulty in
 “ bringing documents, subscribing witnesses, and so forth, before
 “ the removing magistrates; and perhaps the legislature would
 “ act wisely if it made some provision on the subject. But if
 “ the examination is to give no information, the chance is taken
 “ of an appeal. With regard to costs, if previous information
 “ is given to the appellants, then they should pay the costs, if
 “ they go on perversely; but why should they pay the costs
 “ that have been referred to of the preliminary *ex parte* in-
 “ quiry before the removing Justices? It seems to be sup-
 “ posed that there is some inequality if the appellants are to
 “ give the grounds only of appeal, and the respondents to give
 “ the examination. But the examination is that upon which
 “ the respondents themselves act, and they can furnish it with-
 “ out inconvenience. They are required by the terms of the
 “ Statute to furnish the examination, and the appellants to
 “ furnish the ground only of the appeal. We think we do a
 “ benefit to the public by * * declaring that for the future
 “ there must be no doubt that an order of removal is to be ob-
 “ tained on legal evidence.”

Patteson, J.—“ I have no doubt that the evidence on which
 “ the present order has been made was not legal evidence.
 “ Even if there were no distinction between the admissibility of
 “ hearsay evidence of the time and place of birth, yet here the
 “ pauper’s evidence of the time of her birth would be inad-
 “ missible. * * *

“ As to the general question, the strongest objection on the
 “ score of inconvenience relates to the production of deeds,

“ indentures, and subscribing witnesses. There is certainly no
 “ provision in the Statute for the costs of bringing such evidence
 “ before the removing Justices. But then the probability of
 “ an appeal is lessened by requiring such legal evidence, as an
 “ opportunity is afforded to a parish of exercising a sound dis-
 “ cretion whether to appeal or not. Suppose in the case of a
 “ settlement by apprenticeship the pauper to say ‘ I was bound
 “ apprentice to such a person, in such a parish’—are the appel-
 “ lants to hunt out the indenture and the subscribing witnesses?
 “ Obviously the onus would be thrown on the wrong parish.
 “ Whether the inconveniences of our decision are so great as to
 “ render it expedient for the legislature to interfere I do not
 “ know; but I am satisfied that our decision is the only one
 “ we could come to on legal principles. *If after the objection*
 “ *is pointed out to their order the respondents feel that they*
 “ *are wrong, they may probably, after notice to the other*
 “ *parish, be able to abandon it, and get another made on*
 “ *legal evidence. * * **” (*)

Coleridge, J.—“ * * * Was there legal evidence in this
 “ case? *R. v. Erith*, 8 East. 539, decides that hearsay evi-
 “ dence of a place of birth is inadmissible. Were the former
 “ cases rightly decided? * * * I am satisfied that those cases
 “ were rightly decided, and, though inconvenience may be the
 “ result, that the inconvenience would be the greater if we had
 “ decided otherwise; and the Act in some measure remedies the
 “ inconvenience, by suspending the actual removal for twenty-
 “ one days, during which the objection to the examination may
 “ be pointed out. By our decision we merely carry out the
 “ old law, for an order might always have been quashed if bad
 “ on the face of it; and if it had been the practice to set out the
 “ grounds in the order itself, the order might always have been
 “ set aside if those grounds were insufficient. The only change
 “ is that now the examination must be sent with the order,
 “ and thus the grounds are open to immediate objection.

Wightman, J.—“ * * * If we had decided otherwise than

(*) See *post.*, page 142.

“ we have, the object of the Act would have been defeated.
 “ That object appears to have been the prevention of litigation
 “ and expense, by compelling in the outset a mutual disclosure
 “ between the contending parties. * * Independently of the
 “ distinction laid down in *R. v. Erith*, that the hearsay evi-
 “ dence that would be sufficient to prove the time is insufficient
 “ to prove the place of birth, the evidence in this case would
 “ not be admissible to prove the time. For in all cases the
 “ declarations as to time of birth have been made by those who
 “ would know the fact; and here it is proposed to allow the
 “ evidence of a person who could not know the fact.”

Order of Sessions confirmed.

Examination—Defective.

Q. v. Eastville. 1 G. & D. 150 : *S. C. 1 A. & E.* (n. s.) 828 : 10 L. J. R. (n. s.)
 M. C. 132.

THE pauper in her examination stated that she had heard her husband say that his place of settlement was in Eastville; and that certain rate-payers and inhabitants of that parish had told her that she belonged to Eastville; and that they had taken her husband without an order. The appellants in their notice of appeal denied all these facts. At the trial the respondents proposed to prove a settlement by hiring and service. This was objected to by the appellants; but admitted by the Sessions, who confirmed the order.

In support of their decision it was contended that the examination, which stated a settlement generally, was sufficient, and that it was not necessary that the precise grounds of the settlement should be set out; that there was a distinction between the examination and the statement of the grounds of appeal, in which greater precision is required, as was decided in *K. v. Kelvedon*, 5 A. & E. 687 : *S. C. 1 N. & P.* 138.*

Coleridge, J., observed—“ I think I was wrong in the distinction I took in *K. v. Kelvedon*, as to the 4 & 5 Will. IV. c. 76, not tying the respondents down to the same particularity as it does the appellants.”

* See vol. i. of this Abridgment, page 185.

Then this ought to have been objected to by the appellants in their notice, instead of the denial of the facts alleged in the examination.

Contrà, it was argued that the distinction between the examinations and the statement of the grounds of appeal could not be sustained.

Lord Denman, C. J.—"The objection was distinctly taken " at the trial; and it ought to prevail, notwithstanding *K. v. Kelvedon*." Order quashed.

Q. v. Mildenhall. 2 G. & D. 86: S. C. 11 L. J. R. (n. s.) M. C. 107.

THE pauper was removed on two examinations: one of Matilda Roper, the other of Absalom Barnett. Matilda Roper stated, " About fourteen years ago I was married to W. R. About " seven years ago my husband's father was, I believe, removed " by order of Justices from the parish of St. Mary, Nottingham, to the parish of Mildenhall in Suffolk, and I have not " heard of him since." She negatived the fact of her husband's having gained any settlement. Barnett stated, "W. R., " the father, was removed by order of Justices from the parish " of St. Mary, on the 11th of June, 1834, to the parish of Mildenhall, against which order there was no appeal." It was objected that these examinations were insufficient, as the order was not produced, nor its loss shown. The Sessions overruled this objection, and confirmed the order.

In support of their order it was urged that the strict rules of courts of law in regard to the production of documents in the possession of third parties, or of the other side, ought not to prevail in these inquiries before Justices. Here the order would not be in the custody of St. Mary, Nottingham, but would most probably have been sent to Mildenhall.

The Court, however, were of opinion that the presumption was, that the order would have remained with the removing parish; the ordinary language of an order of removal requiring the order, or a copy thereof, to be delivered to the parish officers with the pauper. Order quashed.

Q. v. Middleton in Teesdale. 3 P. & D. 473 : S. C. 10 A. & E. 688 : 9 L. J. R. (n. s.) M. C. 55.

THE pauper's examination stated that her father gained a settlement in the township of Middleton in Teesdale, by renting and occupying a house and land of one F. in the said township, of the yearly rent of 10*l.*; and that she had done no act to gain a settlement. The appellants objected, in their notice of appeal, that the examination was bad upon the face thereof. On the trial of the appeal, the Sessions held that the appellants could not take any objection to the order of removal, as they had not pointed out any defect in the examination, and confirmed the order.

In support of their order it was argued that the notice of appeal ought to have specified the objection to the examination, so that the respondents might have obtained a fresh order. Here the statement was too vague and general.

Lord Denman, C. J.—"The objection taken by the appellants is, that the order is bad; and the question is, whether it is not clearly defective, not on any formal objection, but substantially for want of showing that the Justices had power to make a removal. Now it appears by the examination that the pauper describes a renting by her father, but makes no statement as to its being for a sufficient period to confer a settlement; the Justices, consequently, had no jurisdiction to order a removal. When the respondents received the grounds of appeal, it was their duty to get a better order if they could; but as they have chosen to rest upon it, they must take the consequences. * * *

Patteson, J.—"Our judgment may appear strict; but it is better for all parties to hold them strictly to the terms of the Act. *The examination should contain within itself a sufficient statement of a settlement.* Here the pauper was never asked how long, or when, her father occupied; and the statement is almost as meagre as if she had merely stated that her father was settled in the appellant parish."

Order of Sessions quashed.

*Abandonment of the Order.**

Q. v. Justices of Middlesex. 3 P. & D. 459: S. C. 11 A. & E. 809: 9 L. J. R.
(n. s.) M. C. 59.

A PAUPER was removed from the parish of Tottenham on the 25th of January, 1839, to the parish of St. Pancras. At the ensuing Sessions the parish officers of St. Pancras entered the appeal, and on the 11th of April gave notice of trial for the 24th. On the 14th of April the respondents' attorney gave notice that he should not defend the order, but should move to quash it, or abandon it. On the 23rd the appellants received a copy of an order of *supersedeas* by the Justices who made the order of removal, alleging a mistake in the examination. The Sessions, on the 24th, refused to try the appeal, as the respondents produced the *supersedeas*.

A rule *nisi* for a *mandamus* to the Sessions to hear the appeal had been obtained, against which it was contended that it was competent to the respondents to abandon the order made in their own favour at any time; and that, at least, it is a matter of discretion for the Justices at their Sessions to allow an appeal to be entered or not.

Lord Denman, C. J.—“ We think the *supersedeas* was obtained too late. After the appeal has been entered and notice of trial given, the power of the Justices who made the original order is at an end, and the proceedings are lodged before another tribunal. * * *

Coleridge, J.—“ The *supersedeas* appears to have been made simply on the ground that the respondents had discovered a better case than that on which they had originally removed the pauper, and which formed the subject of an appeal. I cannot see that the Justices had any power to make the order of *supersedeas*.”

Rule absolute.

* See *ante*, pp. 131, 134, 138.

Q. v. Justices of West Riding.

(*In re* Longwood v. Halifax.)

1 G. & D. 630 : S. C. 11 L. J. R. (n. s.) M. C. 57.

AN order of removal, made on the 8th of May, 1841, was served on the 11th, and the pauper was removed after the lapse of twenty-one days. After the actual removal, notice of appeal was given, and a statement of the grounds,—namely, that the examination was hearsay evidence. The respondents obtained a *supersedeas* of the order, offered to pay, and ultimately paid, the expenses incurred by the appellants, and took back the pauper. On the 31st of July another order of removal was obtained upon another examination, against which an appeal was entered.

An appeal had also been entered on the 30th of June against the first order, and the appellants at the Sessions moved that it should be quashed. The respondents opposed this application on the ground that, the order having been superseded, the Sessions had no jurisdiction. The Sessions overruled this objection, and proceeded to dispose of the case. It was afterwards shown that the appellants had not complied with a rule of the Sessions which required the original order to be filed with the Clerk of the Peace before the sitting of the Court, and held that they had no jurisdiction to hear the appeal, and ordered it to be struck out.

A rule *nisi* for a *mandamus* to the Justices to hear the appeal had been obtained, against which it was argued that the original order had been disposed of by the *supersedeas* and the settlement of the expenses; and therefore the Sessions had no jurisdiction in the case. But supposing that they were wrong in this, they, nevertheless, had jurisdiction over the appeal, and could decide it as they deemed right; and the ultimate decision was clearly according to the merits.

In support of the rule it was contended that the Justices could not supersede their order after it had been executed. They were then *functi officio*; having given their judgment, and that having been executed. Then the Sessions decided the case on an illegal ground, for they could not by their practice

introduce a new condition on the appeal ; and their decision on this point of practice is open to review in the court of Queen's Bench.

Lord Denman, C. J.—" * * * The object of this application is to make the Sessions restore the appeal, and hear it, so as to get a decision which may conclude the respondents on their first insufficient order, and shut them out from contesting an appeal against their second and amended order upon the merits. * * * Have, then, the Sessions acted so with respect to the appeal before them that we are called upon to interfere ? It is said that we must control them, as they have improperly decided to strike out an appeal because one of their rules of practice had not been observed. But we have nothing to do with the reasons on which the Sessions have decided. If they had struck out the appeal in the first instance, they would have acted correctly, for the appeal was against an order of removal which had been superseded. Eventually they did strike out the appeal : they were right in doing so ; and we will not inquire into their reasons. * * *

" But it is said that the result itself which the Sessions have come to (without reference to their reasons) is wrong, because an order of removal cannot be superseded after it has once been carried into execution. * * * Bayley, J., in *R. v. Justices of Norfolk*, 5 B. & Ald. 484, S. C. 1 D. & R. 69, lays it down that, even where the removing parish consents to a *supersedeas* of their own order before appeal entered, still the Sessions may exercise a discretion, and enter the appeal or not, so as to best answer the purposes of justice. But I think even these words are to be qualified by what follows—' If the parties removing do not choose to pay the expense of maintenance incurred previously to the *supersedeas*, they may then enter the appeal for the purpose of compelling them to do so : if they are willing to do it, the Sessions may refuse to enter the appeal.' When the costs of maintaining the pauper after removal have not been paid to the appellant parish, there may remain something for the decision of the Sessions

“ to operate upon. * * * It is a beneficial rule to lay down,
 “ that where a good objection is pointed out to an order of re-
 “ moval the respondents may bid adieu to it and make
 “ another.”

Patteson, J.—“ * * * The question is, whether the Ses-
 “ sions were right in refusing to entertain this appeal. * * *
 “ I think we should act very hardly by parishes if we were to
 “ say that they cannot cure a mistake by abandoning an order
 “ of removal which they find to be bad, and by making a fresh
 “ one. Before the Poor Law Amendment Act no communica-
 “ tion was necessary between contending parishes respecting an
 “ order of removal. Now that communication is required for
 “ the purpose of preventing litigation, and it would be prejudi-
 “ cial to that purpose, as well as strange, if, after it has been
 “ pointed out to the respondents in the course of such commu-
 “ nication that their order is bad, they should be obliged to
 “ take the case to Sessions, and to increase costs. When an
 “ order of removal is sent under this Statute, and notice of ap-
 “ peal against it is given within twenty-one days after service,
 “ it cannot be said that the order is executed. It is true that
 “ there had been an actual removal of the paupers under the
 “ order. Why? Because the parish removed to had neglected
 “ to give notice of appeal within the twenty-one days. It was
 “ the fault of the appellants that the order was acted upon; but
 “ still the removing parish, whether bound to do so or not, has
 “ in point of fact paid all expenses consequent upon the re-
 “ moval. The general question having now come before us, I
 “ do not hesitate to say that the respondents had a right to get
 “ their order superseded after the objection stated, and that no
 “ Court of Quarter Sessions ought to enter an appeal against
 “ an order so superseded.”

Coleridge, J.—“ * * * If this case stood upon the rule of
 “ the Sessions with respect to the mode of entering appeals, I
 “ should hesitate. I am doubtful whether it is a proper rule;
 “ and I agree that they cannot make such rules of practice as
 “ will vary the general law respecting these appeals. * * *

“ But as it cannot be denied that the Sessions might alter their
 “ decision at any time during the Sessions, and they at last
 “ came to a right conclusion, it matters not whether they acted
 “ on good or bad grounds; their conclusion is right, and we
 “ are not bound to facilitate injustice by making this rule abso-
 “ lute. One word on the abandonment of orders of removal.
 “ I think the present state of the law makes it quite proper that
 “ there should be the right which has been exercised in this case
 “ of abandoning an order made on an insufficient examination;
 “ and I accede to all the observations of my brother Patteson.”

Wightman, J.—“ * * * It is said that the Sessions had at one
 “ time exercised their discretion; that they decided to hear the
 “ appeal, and afterwards rescinded their decision on insuffi-
 “ cient grounds. We cannot go into that; for some reason or
 “ other they have determined the matter; and we may con-
 “ sider this as an application made to us to hear in the first in-
 “ stance.”

Rule discharged.

Q. v. The Directors of the Poor of Brighton. 2 G. & D. 88: S. C. 11 L. J. R.
 (n. s.) M. C. 106.

AN order of removal was made from Brighton to Henfield on the 17th of May, 1841, against which an appeal was entered and respited on the 28th of June following, notice of appeal not being given until the 1st of October. The paupers had been removed in June. After the 4th of October the parish of Brighton obtained an order of two Justices to supersede the order of removal, which, with the notice of abandonment, was served on the 8th of October. Henfield had paid to Brighton 2*l.* for the relief of the paupers, but no offer was made at the time when the notice of abandonment was served to repay this money, or any sum in respect of the expenses of the appeal. The appeal came on to be heard on the 18th of October, at the Sessions, which quashed the order, with costs.

This order having been brought up by *certiorari*, a rule *nisi* had been obtained for quashing it.

It was argued in support of the order that it was simply a

question whether the Sessions had jurisdiction, which it was clear that they had, because the appeal was entered before the *supersedeas* was obtained. *Q. v. The Justices of Middlesex*, 11 A. & E. 809,* establishes this point. In the *Q. v. The Justices of the West Riding*,† the order of *supersedeas* was prior to the entry of the appeal.

Coleridge, J., observed, “ Since the decision of *Q. v. The Justices of Middlesex*, I understand that the Court at the “ Middlesex Sessions have declined to give the appellants their “ costs where the appeal has been entered without notice of “ appeal having been first given: that seems a wholesome “ practice.”

In support of the rule it was contended that this was a manœuvre upon the part of the appellants to get the order quashed, and to conclude the respondents upon the merits. No notice of appeal was given until after the removal, and the appeal was entered and respited behind the backs of the respondents. The order was abandoned when the notice of the appeal was given, and therefore the principle of the *Q. v. The Justices of the West Riding* is applicable.

The Court held that this case was not in point, because there it was attempted to compel the Sessions to quash an order which had been abandoned before the appeal had been entered. Here the order was filed at the Sessions: they were in possession of, and had, jurisdiction; so that the question was only one of costs, with which this Court would not interfere. The alleged result of the course pursued by the appellants may be avoided by a special entry on the records of the Sessions.

Rule discharged.

Removal of Irish Paupers.

Q. v. Preston. 12 A. & E. 822: *S. C.* 4 P. & D. 509: 10 L. J. R. (n. s.)
M. C. 22.

THE pauper's husband was born in Preston, of Irish parents, who resided there for some time after his birth, and then

* See ante, page 142.

† Ante, page 144.

removed to Manchester. Neither of them had a settlement in England. The pauper married at Manchester in 1832, and had three children. He continued to reside there, apart from his parents, until he quitted that town, and went, with his wife and children, to live at Great Bolton, until he deserted her, and absconded. She and her children were then removed to Preston, as the birth settlement of the husband. The Sessions, on appeal, confirmed the order.

In support of their order it was argued that the Statute 3 & 4 Will. IV. c. 40, for the removal of poor persons born in Ireland, and chargeable to parishes in England, does not take effect when the pauper himself is not removable to Ireland. *R. v. Great Clacton*, 3 B. & Ald. 410. Here the pauper's husband was emancipated, and formed no part of his parents' family. Subject to the rule that wives and unemancipated children are to be removed with the head of the family, the children of *Irish* parents born in this country are settled at their place of birth.

Against the order it was contended that the effect of the Statute is to prevent such children of an Irishman as have not gained a settlement in England from having a birth settlement. They therefore remain casual poor, like their parents, unless the maiden settlement of their mother can be found. *R. v. Mile End Old Town*, 4 A. & E. 196.*

Lord Denman, C. J.—" *R. v. Clacton* is in point; and *R. v. Mile End Old Town* is not opposed to that case. The "order must be confirmed."

Order confirmed.

* See vol. i. of this Abridgment, page 197.

SETTLEMENT.

1. *By Birth.*

Q. v. Tipton. 2 G. & D. 92: S. C. 11 L. J. R. (n. s.) M. C. 89.

PREVIOUS to and up to 1832, the parish of Hales Owen consisted of fifteen townships, twelve of which are in the county of Salop, and three in the county of Worcester. The three latter were always independent, for the purpose of maintaining their own poor. The former twelve, from time immemorial until 1832, constituted one parish, having one set of overseers, and maintained their poor as such parish. In 1832 the parish of Hales Owen became divided, and all the townships in Salop have since maintained their poor apart, and have had separate overseers. About ten years before such subdivision a pauper was born a bastard in the parish workhouse in the township of the borough of Hales Owen, and was removed, in 1841, from the parish of Tipton to this township. Her mother was legally settled, as it was said, in that part of the parish which now forms the distinct township of Oldbury, and was maintained at the time of the pauper's birth in the workhouse, as a pauper of the parish of Hales Owen. This order was quashed by the Sessions.

In support of their order it was contended that neither Hales Owen township, nor Oldbury, had any capacity, as separate places of settlement, in respect of any facts which occurred before they became independent townships. But if any such could have existed, then the settlement must be considered to have been in Oldbury, to which the mother of the pauper belonged, by virtue of the 54 Geo. III., c. 170, § 3.

Against their order it was contended that this township was a district which always maintained its own poor, though not separately, and therefore a settlement might be gained by birth in it. And the settlement could not be in Oldbury, because it

is found as a fact that the pauper's mother was received into the workhouse on account of Hales Owen.

The Court took time to deliberate.

Lord Denman, C. J., afterwards stated the facts of the case, and continued : “ The question is whether the pauper gained
“ a settlement in the township of Hales Owen by birth in the
“ workhouse ; and that must depend upon this, how far before
“ such subdivision each township ought to be considered as
“ connected with or independent of the parish for purposes of
“ settlement. Generally speaking, they are not so connected :
“ any act by which a settlement may be gained has no refer-
“ ence to the township in which it may be acquired, but to the
“ parish only. Whether that settlement was gained in the
“ township of the borough of Hales Owen, or Oldbury, or any
“ other of the ten townships constituting the parish of Hales
“ Owen, was before the separation wholly immaterial : it was
“ not a settlement in township A or B, but in the district,
“ where alone it could be gained, the parish. * * *

“ The decision in the case of *R. v. Oakmere*, 5 B & Ald.
“ 775 : *S. C.* 1 D. & R. 427, was to this effect,—that the birth
“ of a pauper in the forest of Delamere, whilst extra-parochial,
“ gained no settlement in the township of Oakmere, which was
“ constituted such township by Act of Parliament long after ;
“ or, in other words, that the state of things at the time of the
“ birth was to be considered, and then no settlement could of
“ course be gained. So here, by 54 Geo. III. c. 170, § 3, the
“ settlement of the pauper at her birth was in the *parish* of
“ Hales Owen, that being the district on whose account the
“ pauper's mother was received and maintained in the house.
“ The *locality* therefore of the township of the borough of
“ Hales Owen is excluded, and all the townships contributing
“ to the workhouse stand on the same footing. Indeed,
“ independent of the Statute, the settlement by birth would
“ have been in the *parish*. That being so, to sustain the
“ order of removal into the *township* of Hales Owen we must
“ hold that a settlement by birth was gained equally in

“ the *parish* and *each* of the townships comprising it, for
 “ which we can find no warrant of direct authority or analogy
 “ in the law of settlement.

“ It has been suggested as a difficulty, that, unless we so
 “ hold, the parish, by subdivision, will get rid of settlements,
 “ and that persons who would otherwise have gained them
 “ may have none. A similar result happened under circum-
 “ stances nearly the converse of the present, in the case of R.
 “ *v. Saughton-on-the-Hill*, 2 B. & Ald. 162. There the
 “ pauper had gained a settlement in Saughton, and afterwards
 “ in Gloverstone, then a *township*; afterwards, by certain
 “ alterations in the castle of Chester, all the houses in Glover-
 “ stone were pulled down, and it ceased to exist as a township.
 “ The removal was accordingly into Saughton, as the last
 “ practicable place of settlement. The Court however decided
 “ that the settlement in Saughton was extinguished by that in
 “ Gloverstone, though the necessary effect of the decision was
 “ to leave the pauper without any settlement at all. Upon the
 “ whole, we are of opinion that the order of Sessions was right.

Order confirmed.

2. *By Hiring and Service.*

Q. *v. East Winch*. 12 A. & E. 697 : S. C. 4 P. & D. 342 : 10 L. J. R. (n. s.)
 M. C. 7.

THE pauper was let by his father, before Old Michaelmas-day, 1791, to W. K., of the parish of Leziate, from such Old Michaelmas-day till the following Old Michaelmas-day, at the wages of 2*l.* 2*s.* and his board and lodging. He continued in the service, sleeping in Leziate, until Midsummer, when he was taken ill, and sent to his father's house at East Winch, where the latter was settled, till well enough to return to work. He received his victuals from his master, and was attended by a medical man at his master's expense. He continued unable to work during the continuance of the year, but the master paid him his wages for the entire year. He was several times afterwards relieved by the parish officers of Leziate, when residing

out of that parish. But the Sessions found that such relief was given through a misconception of law, and decided that the pauper was settled in East Winch.

Against their order it was contended that the pauper was in his master's service during the time that he was maintained by his master at his father's house, and that the settlement was gained in the parish where the service was performed in contemplation of law, *i. e.* in the master's parish. It was also contended that the parish officers of Leziate were concluded by the relief.

The Court held that this was only evidence for the consideration of the Sessions. Upon the other point—

Lord Denman, C. J., said, “* * * A residence during a
“ dispensation from service has certainly been understood to be
“ a residence under the service. If however we were to adopt
“ the doctrine which it is sought to deduce from *R. v. Sutton*,
“ 5 T. R. 657, we should introduce exception upon exception,
“ by making the Sessions inquire into the particular cause of
“ the dispensation. I agree in that decision to the extent of
“ holding that the service there continued in law for the time
“ during which it was impossible to perform it in fact.”

Order of Sessions affirmed.

Q. v. Ravenstonedale. 12 A. & E. 73 : S. C. 3 P. & D. 469 : 9 L. J. R. (n.s.)
M. C. 76.

THE pauper hired with a farmer in the appellant parish to serve for half a year from Whitsuntide. At the Martinmas following he hired again to serve another half-year, and so for eight successive half-years. A month before the Whitsuntide at which the last of these eight hirings expired he hired again for the summer half-year; some days afterwards he hired for the next winter half-year. Both hirings were before Whitsuntide. At the expiration of the summer half-year he quitted the service, having served continuously for four years and a half. The Sessions confirmed the order of removal.

In support of their order it was argued that there was a

hiring for a whole year, inasmuch as on the making of the second contract the pauper was bound to serve for a year from the Whitsuntide then next.

Contrà, it was contended that two distinct contracts, made at different times, to serve for successive half-years, did not constitute a hiring for a year. Here no action could have been shaped upon the two contracts, as on a contract of hiring for a year.

Lord Denman, C. J.—" * * * Whether there be one or two contracts, it is enough if before the commencement of the year's service the servant be bound to serve for that whole year. * * *"

Littledale, J.—" The servant was under an obligation to serve for a year: that is all that was necessary. The words of the 3 & 4 Will. and Mary, c. 11, § 7, are, 'hired into any parish or town for one year.' These words are satisfied whether one or more steps lead to the being so hired."

Patteson, J.—" * * * The argument against the order of Sessions is founded on the expression which occurs in some of the cases—'entire contract.' But in the cases themselves the circumstances always are that a second hiring takes place after the commencement of the service under the first. I do not say that in such a case a second hiring for six months could be joined to a previous hiring for six months, for in that case there would at no time have been a prospective dominion for one year."

Williams, J.—" If there had been any interval between the first and second half-years, that might create a distinction. * * *"

Order of Sessions affirmed.

3. *By Apprenticeship.—Putting away of Apprenticeship.*

Q. v. Wainfleet All Saints. 3 P. & D. 73 : S. C. 11 A & E. 656 : 9 L. J. R.
(n. s.) M. C. 31.

By indenture, dated June 14, 1819, the pauper was duly bound as a parish apprentice for seven years to one Smith, of Alford, a

tailor. He served his master for four years, when his father agreed with Brooks, of Wainfleet All Saints, that the pauper should do tailor's work for Brooks upon the terms that Brooks should pay Smith 5s. a-week out of the pauper's earnings. The apprentice worked for Brooks in Wainfleet All Saints, and inhabited there until the termination of the term, except during ten days, when, Smith being ill, the pauper went to assist him. The sum of 5s. per week was paid. No assignment of the indenture was made, nor was the consent of any Justices obtained for such service at Wainfleet All Saints. The pauper having been removed from this parish to Alford, the Sessions quashed the order.

In support of their order it was contended that the provision in the 56 Geo. III. c. 139, § 9, which prohibits the putting away or the transfer of a parish apprentice without the consent of the Justices, could not apply to the present case, where there was a mere loan of the services, the original master retaining his dominion over the apprentice. It is true that the preamble of the clause uses the term "placing out," yet the enactment prohibits the putting away, which must apply to the entire transfer of the apprentice.

Lord Denman, C. J.—"The statute would be constantly
"evaded if a case like the present were not to be taken to be
"within it. * * * The object of the legislature was to pro-
"hibit the putting apprentices under the control of a new
"master without the interference of the magistrates. I think
"it would be better if the Sessions were to take upon them-
"selves to say in these cases whether there has been a putting
"away of the apprentice."

Littledale, J.—"There are three things mentioned in the
"Act—viz. the assignment, placing out, and putting away of
"the apprentice—which all appear to me to mean the same
"sort of thing. The apprentice here, though not dismissed,
"was placed out—that amounts to a putting away—with an-
"other master, and was intended to be under the superintend-
"ence of magistrates."

Williams, J.—" * * * The object of the legislature was
 " undoubtedly to prevent an indiscriminate placing out, as well
 " as assignment, of apprentices. For the same reason that the
 " magistrates are to take care that an apprentice is assigned to
 " a proper person, they are to take care that the apprentice is
 " not placed out with any but a proper person for any minor
 " period. I think this apprentice was put away with another
 " master, though not absolutely transferred to him; but the
 " enacting part of the clause uses both expressions—'put away
 " or transfer.' "

Coleridge, J.—" I have doubts on the question; but they are
 " not strong enough to lead me to differ from the rest of the
 " Court."

Order of Sessions quashed.

Stamp on Indenture of Apprenticeship.

Smith v. Agett and another. 8 D. P. C. 411.

IN an action for work and labour by the plaintiff's apprentice, the indenture was produced, in which no consideration was expressed. It was objected that it had not been stamped until a year after its date and execution. It was, however, received in evidence.

A motion was made for a new trial to the Court of Exchequer; and it was urged that the Statute 8 Anne, c. 9, required that the indenture should have been stamped within a time therein specified, in no case exceeding six months. The 55 Geo. III. c. 184, varies the amount of duty, but does not repeal the provisions in the Statute of Queen Anne.

The Court held that the indenture was not within the provisions of the Statute of Queen Anne; and that the Statute of Geo. III. did not make any provision as to the time within which the stamp was to be affixed.

Objection not sustainable.

Stamp on Assignment of Apprentice Deed.

Morris v. Cox. 2 Mann. & Gr. 659 : S. C. 3 Scott's N. C. 116.

THIS was an action of covenant by an apprentice for breach of covenant by a party to whom his indenture of apprenticeship had been assigned. At the trial it appeared that in the assignment it was provided that, instead of the master paying the apprentice part of the earnings, the new master should find him in food, lodging, and clothing, from the date of the assignment for the remainder of the term, and for one year more. This assignment was stamped with a stamp of 1*l.*, and it was objected that, in consequence of the additional stipulations in the deed, and the extension of the term, there ought to have been a further stamp of 1*l.* 15*s.* The objection was overruled, and the plaintiff recovered a verdict.

A rule for entering a nonsuit had been obtained, against which it was argued that the stamp was sufficient ; that no new term was actually created, though the terms of the engagement were altered.

In support of the rule it was contended that this instrument operated both as an assignment of an indenture of apprenticeship, and also as a new contract ; and, consequently, that it required two stamps.

The Court referred to the 55 Geo. III. c. 184, Schedule A, Art. Apprenticeship, and held that the stamp of 1*l.* was sufficient in the case of an assignment of an indenture containing new stipulations, as in the present case ; and

The rule was discharged.

4. *By Renting a Tenement.—Payment of a Year's Rent.*

Q. v. Melsonby. 12 A. & E. 687 : S. C. 4 P. & D. 515 : 10 L. J. R. (n. s.)
M. C. 2.

IN January, 1831, W. M., being the occupier of certain premises in Melsonby, as tenant from year to year at 10*l.*, gave

them up to the pauper. The landlord agreed to accept him as a yearly tenant from Martinmas to Martinmas at the same rent, if he would be answerable for the current half-year's rent. The pauper continued to occupy until October, 1832. At May-day, 1831, he paid 5*l.* for the half-year's rent; and at Martinmas, 1831, 5*l.* for the half-year's rent due from May-day up to that time. In October, 1832, he agreed to give up the possession to one Rhodes, not having paid any rent since that due at Martinmas. Rhodes agreed to take the pauper's fixtures at 5*l.*, and some furniture at 4*l.* 5*s.*, and to pay 9*l.* 5*s.* to the landlord for the rent due subsequent to Martinmas, 1831. The premises had become the property of one Young, who agreed to accept Rhodes as his tenant, upon an undertaking to pay the rent up to Martinmas, 1833. Rhodes did not pay the rent, and Young at that time distrained for the whole arrears; and upon that distress the fixtures and furniture were seized, and produced sufficient to satisfy the arrears and the expenses of sale. Among these articles were fixtures and furniture, formerly belonging to the pauper, worth 5*l.*

The Sessions held that the pauper gained a settlement in Melsonby.

In support of their order it was contended—First, that the pauper's payment of 5*l.* at May-day, 1831, was on his own account, as the term had vested in him, by operation of law, by the surrender of W. M., assented to by the landlord, and the payment of 5*l.* at Martinmas, 1831, was clearly in his own right. Secondly, another payment of 5*l.* was made by the pauper through the distress upon the fixtures and goods, which were left with the incoming tenant expressly for the payment of the rent. Then 1 Will. IV. c. 18, § 1, does not require that the payment, occupation, and hiring should be all for the same year. It is sufficient if there be a yearly hiring, an occupation for a year, and a year's rent paid, the premises being always the same, and held under the same hiring.

It was argued that the pauper did not become tenant from

Martinmas, 1830, a term previous to his actual entry; and that the payment by the distress in this case could not avail, as it was not a payment out of the pauper's property.

Lord Denman, C. J.—" * * * *K. v. Pakefield*, 4 A. & E. 612,* is decisive as to the last payment relied on here. The argument as to the first payment is too ingenious to be safely adopted. The object of Statute 1 Will. IV. c. 18, was to simplify the rules under which a settlement was to be gained by occupation and payment of rent for a year."

Williams, J.—"One object of this Statute was to put an end to constructive payments of rent, which had perplexed the Courts of Quarter Session. If the terms of the Statute are adhered to, and actual payment of the rent insisted upon, no difficulty will arise. As to the third portion of the rent, the circumstances in *K. v. Pakefield* were more favourable to the present argument than the facts presented here; but the Court there adopted the plainer construction."

Coleridge, J.—" * * * Supposing the pauper's occupation had terminated in January, 1832; according to the argument, the Statute would then have been satisfied. The true observation upon this is, that such a mode of viewing the case is too ingenious and subtle. * * * As to the rent levied by distress, * * * the landlord only agreed, in October, 1832, to accept the new man as tenant, and received his undertaking for the arrear of rent. Even if that party had paid it immediately, it would be a stretched construction to call this a payment by the pauper. But the contract was not acted upon, and then the landlord exercised his right of distraining for the rent due. Upon whose property did he distrain? That of the actual tenant. Can it be said that this was a payment of the rent for the last half-year of the pauper's occupation 'by the person hiring' the premises?

Order quashed.

* See vol. i. of this Abridgment, page 263.

By renting a Tenement—Joint Tenancy.

Q. v. Aberdaron. 1 G. & D. 178: S. C. 1 A. & E. (n. s.) 671: 10 L. J. R.
(n. s.) M. C. 95.

IN 1809 the pauper's husband applied to become tenant to one T. P. Jones, of a dwelling-house and premises in Llanistymdwy. The agent refused to let to the pauper's husband, unless his father-in-law became joint tenant with him; and accordingly the tenement was let to her husband and her father, as joint tenants, at the yearly rent of 17*l.* 17*s.* The pauper's husband entered and occupied alone, without the interference of his father-in-law, and paid the full rent for four years, though the names of both parties were in the receipts.

The Sessions held that no settlement was gained.

Against their order it was argued that the pauper here came to settle upon a tenement of the yearly value of 10*l.* within the 13 and 14 Charles II. c. 14, and that therefore the contract was immaterial. Here, however, the contract was not by two persons in fact. The father-in-law was only the surety. Supposing, however, it was a joint taking, the father-in-law might have underlet to the pauper's husband.

Contrà, it was contended that there was no ground for presuming an underletting; and that all the cases show that, where there is a joint renting, no settlement could be gained under the 13 & 14 Charles II. c. 14, unless the annual value of the tenement was 10*l.*

Lord Denman, C. J.—"If we followed exactly the words of "13 & 14 Charles II. c. 14, we should be very far from the "decisions. It is found, indeed, that the tenement was occu- "pied by the pauper's husband solely, but that it was not let "to him solely. It might afterwards have been underlet to "him by his father-in-law, but that is not found; and upon "the case stated his father-in-law might have come in at any "time, and have occupied with him. According to the deci- "sions we are bound to say that no settlement was gained."

Order of Sessions confirmed.

By renting a Tenement—Hiring for a Year.

Q. v. Chawton. 1 A. & E. (n. s.) 247 : S. C. 4 P. & D. 525 : 10 L. J. R. (n. s.)
M. C. 55.

THE pauper rented a tenement in the parish of New Alresford, under an agreement made December 9, 1829, whereby R. W. agreed to let, and the pauper agreed to rent and take of him, all, &c., for the term of six months from the 1st of January then next, and so on for six months to six months, until one of the said parties should give to the other of them six calendar months' notice in writing to determine the tenancy, at and under the rent of 13*l.* for every six months; the first payment was to be made on the 1st day of July, 1830. The pauper entered and occupied for several successive years. The Sessions held that the premises were not rented for one whole year, as required by the 6 Geo. IV. c. 57.

In support of their order it was argued that under the agreement a tenancy of six months certain only was created; and if it should be held that two periods of six months could be joined, they must be taken according to the general rule to be *lunar* months, and then there would not have been a renting for a year, which is made up of twelve calendar months.

The *Court* were of opinion that this was a taking for two successive periods of six calendar months—that is, for a year; for although the term *month* ordinarily signifies a *lunar month*, here the context showed that *calendar* months were intended.

Order quashed.

5. *By Estate.—Equitable Interest.*

Q. v. St. Margaret, Leicester. 1 G. & D. 625 : S. C. 11 L. J. R. (n. s.) M. C. 48.

J. N., being seised of fourteen freehold houses in St. Margaret, Leicester, devised them to trustees to sell and divide the purchase-money among his nine children: the share payable to any of his daughters who should be married was to be for her sole and separate use. The pauper had married one of the daugh-

ters; and prior and up to the death of the testator, occupied one of the testator's houses as his tenant, and paid rent for the same. After the testator's death he continued to occupy the premises, and paid his rent to the trustees for two years, when the property was sold. The trustees divided the proceeds of the rents monthly, and ultimately the purchase-money, among the parties entitled, and the pauper received a share of those rents and purchase-money.

The Sessions held that the pauper gained a settlement by an equitable estate.

In support of their order it was contended that the wife had an equitable estate, notwithstanding the trust to sell. The testator's daughters could have elected to keep this estate, instead of having it sold, and the Court of Chancery would have compelled the trustees to convey it to them.

Against the order it was argued that the testator had required the property to be sold and the proceeds divided; and unless *all* the children came into equity and elected to have a conveyance, the character of the property could not be changed. No one child could therefore have had any interest in it, and certainly no particular cottage belonged to the pauper.

Patteson, J.—" * * * In most of those cases where the settlement has been allowed, there has either been only one person entitled, or there has been an agreement between the several persons entitled. * * "

Coleridge, J.—" This case may be decided on two grounds: first, the pauper appears to have resided as tenant; secondly, it is at all times a delicate matter for us to take cognizance of equitable rights; but we have one broad rule, that we will notice nothing but a clear right, and will not go into doubtful cases of equity. Here there were nine persons interested in the devised property, and nothing has been done by agreement between them to turn it into real estate. * * "

Wightman, J.—" * * * The concurrence of all would have been necessary to induce a Court of Equity to convert

“ the devised property. The power of sale would have been
 “ much prejudiced if the whole could not have been sold.”

Order quashed.

By Estate—Non-residence.

Q. v. St. Giles-in-the-Fields. 1 G. & D. 557 : S. C. 11 L. J. R. (n. s.)
 M. C. 18.

THE pauper, on September 6, 1826, purchased certain leasehold premises in the parish of St. Giles-in-the-Fields, paid the purchase-money, amounting to 1575*l.*, and occupied them from that time until June, 1827, when an execution was put into the house and his goods were sold. These premises remained shut up until October 25, when the pauper assigned his lease, and never returned to them, having paid the reserved rent of 150 guineas per annum during the period that he held the lease. In 1830 the pauper removed to and resided at a place more than ten miles from the parish.

The Sessions held that the pauper was not settled in the parish of St. Giles.

In support of their order, it was argued that the pauper lost his settlement by estate through his non-residence, 4 & 5 Will. IV. c. 46, § 68 ; and did not gain a settlement by renting a tenement, as he did not occupy the premises during the whole year, as the 6 Geo. IV. c. 57, requires.

Against their order it was contended, first, that the section of the Poor Law Amendment Act referred to only suspended the settlement by estate.

Lord Denman, C. J., observed—“ Can you make that construction consistent with the language of the Statute? It
 “ says, in case such person shall cease to inhabit within the
 “ prescribed distance and *hereafter* become chargeable, he
 “ shall be liable to be removed.”

Then the pauper acquired a settlement by the operation of the Statute 13 & 14 Charles II. c. 12, as he came to settle upon a tenement of the yearly value of 10*l.*, and neither the settlement by estate nor that of renting a tenement comes into question in this case.

Lord Denman, C. J.—" I think the settlement set up in this case, by settling on the tenement of the pauper, can be considered as claimed only by virtue of the possession of the estate; and that therefore it is put an end to by the Statute on the pauper ceasing to reside within ten miles of it."

Order confirmed.

Q. v. Whissendine. 1 G. & D. 560 : S. C. 11 L. J. R. (n. s.) M. C. 42.

THE pauper had gained a settlement by apprenticeship in the parish of St. Martin, Leicester. His indentures were cancelled, and he went to live with his mother at Whissendine, in Rutlandshire, on an estate which had been devised to himself and his brothers. Becoming insane, he was removed, in 1837, to the Leicester County Lunatic Asylum; and ultimately, the payments thereto having ceased to be made by his relations, an order was made by two Justices upon the parish of Whissendine for his support. Against this order there was an appeal; and the appellants contended that the pauper had lost his settlement by estate through his ceasing to inhabit within ten miles of it, under the operation of the 4 & 5 Will. IV. c. 76, § 68.

The Recorder confirmed the order.

In support of his judgment it was contended, first, that this clause in the Poor Law Amendment Act did not apply to pauper lunatics at all, and that the legislature did not intend to interfere with the provisions contained in the Statutes relating to pauper or criminal lunatics, whose removal and maintenance are regulated by different principles from those of other paupers. Secondly, the pauper, being a lunatic, cannot be said to have ceased to inhabit; for ceasing to inhabit implies some exercise of the will, of which the lunatic was incapable. He has been removed, but he did not cease to inhabit by his own act.

Lord Denman, C. J.—" It appears to me, if the legislature had been called upon to make provision for this case, they could not have made use of stronger language. The words are not *go*, or *depart*, but *cease to inhabit*. It is certainly very possible that all the consequences of this enactment

“ were not before the legislature in framing this Statute, but
 “ that consideration will not authorise us to refuse to give effect
 “ to language which is clear and unambiguous.”

Patteson, J.—“ It is quite clear that, in order to satisfy this
 “ section of the Statute, it is not necessary for the pauper to
 “ have resided, in the legal sense of the word, elsewhere. It
 “ certainly did appear to me at first very strange that a parish
 “ might remove a lunatic pauper, and so rid themselves of the
 “ burden of his maintenance: but such is not the case here;
 “ the pauper was in the first instance removed by his relations.
 “ I have no doubt that he then ceased to inhabit.”

Coleridge, J.—“ I still entertain some doubts whether this
 “ case was in the contemplation of the framers of the Statute;
 “ but upon the whole I think this pauper ceased to inhabit
 “ within the meaning of it.”

Wightman, J.—“ There may in some cases be difficulties in
 “ the application of this law, but they do not exist in this in-
 “ stance. The words are too strong to be overcome.”

Order quashed.

Q. v. Hendon. 12 L. J. R. (n. s.) M. C. 3: S. C. 2 G. & D. 394.

THE pauper's father in 1814 married S. G., who at that time was the yearly tenant and occupier of a public-house, situate in the appellant parish, at 9*l.* per annum. He occupied it for several years, and resided there until the pauper became of age and emancipated. After the emancipation, and after the 4 & 5 Will. IV. c. 76, the pauper's father and himself removed to a greater distance than ten miles from the appellant parish, and continued to reside there until the pauper became chargeable, and was removed by the order.

The Sessions quashed the order.

In support of their order it was contended, that by the operation of the 4 & 5 Will IV. c. 76, s. 68, the pauper had lost the settlement derived from his father, in consequence of the latter having ceased to reside within ten miles of the parish where his estate was situate. His settlement is gained by virtue of the

possession of an estate by his father, and therefore he comes within the words of the enactment.

Lord Denman, C. J.—" * * * I think that the settlement put an end to by section 68 is that gained by the person himself, but not a settlement gained by derivation through him; otherwise it might be possible to go back three or four generations, and destroy an existing derivative settlement by proof that some one ancestor had ceased to reside on his estate."

Coleridge, J.—" The settlement of an emancipated child cannot be affected by anything that happens to the father; and an emancipated child of a person removing ten miles from his parish would lose his settlement, not by virtue of this clause, but of the general law."

Order of Sessions quashed.

6. *By Payment of Rates.*

Q. v. Brighton. 1 A. & E. (n. s.) 674: 1 G. & D. 54: S. C. 10. L. J. R. (n. s.) M. C. 93.

THE pauper's husband occupied premises in Brighton, under a lease for a term of years, from the 27th of March, 1838, to the 27th of the following March, when he died. He paid the first three-quarters' rent, viz. 80*l.*, but the last quarter's rent was never paid. He underlet a part of the premises, but was assessed to the poor-rate, and paid the rates, during his occupation. The Sessions held that a settlement was gained by the assessment to and payment of the parochial rates.

In support of their order it was argued that, though the whole year's rent was not paid as required by the 6 Geo. IV. c. 57, yet that, as the rent to the amount of 10*l.* had been paid, the case was within the 1 Will. IV. c. 18, the second section of which, it was contended, embraced the settlement by payment of parochial rates, as well as that by renting a tenement.

Against the order it was urged that the second section of the 1 Will. IV. c. 18, did not extend to this head of settlement. The title of the Act refers to the renting of a tenement only, and may be taken to assist in the exposition of the Statute.

The title of the 6 Geo. IV. c. 57, mentions both modes of settlement. Now, the first section of the 1 Will. IV. c. 18, applies to the renting of a tenement only; and the second section is but a proviso to the former, and dependent thereon; consequently it cannot have a more extensive operation.

Lord Denman, C. J.—"I do not find the intention to restrict, and I think the section was meant to apply to both kinds of settlement."

Patteson, J.—"The 6 Geo. IV. provides for the one mode of settlement as well as the other; and the words in the second section are, payment to the amount of 10*l.* shall be deemed sufficient for the purpose of gaining a settlement under the recited Act. That would include the settlement by payment of rates."

Order of Session confirmed.

APPEALS.

I. PRACTICE AT THE SESSIONS.

Jurisdiction to hear Appeals in Borough Courts of Quarter Sessions.

Q. v. St. Lawrence, Ludlow. 3 P. & D. 155: S. C. 11 A. & E. 170.

Two Justices of the borough of Ludlow made an order on the churchwardens and overseers of St. Owen for the payment of the charges of conveying a pauper lunatic from the parish of St. Lawrence, Ludlow, to a lunatic asylum. On appeal to the Borough Sessions the order was quashed. The Sessions were held under a grant of a separate Court of Quarter Sessions which had been made to this corporation under the provision of the 5 & 6 Will. IV. c. 76; and it was objected that the Recorder had no jurisdiction to try this appeal.

In support of the order it was argued that the right to try the appeal was not given by the Crown, and therefore the silence of the charter was immaterial. The 9 Geo. IV. c. 40, s. 46,

gives an appeal to the Quarter Sessions of the county ; and by section 61, the word “ county ” is to be deemed to include a “ town corporate.” Moreover, the 5 & 6 Will. IV. c. 76, s. 105, enacts that the Recorder of the Borough Court of Quarter Sessions shall have cognizance of all crimes, offences, and matters whatsoever cognizable by any Court of Quarter Sessions for counties. Therefore the Recorder has jurisdiction over these appeals.

Against the order it was contended that under the several Statutes relative to lunatic paupers the appeal was really given to the Justices of the county only ; and that the interpretation clause ought not to be extended to give this appeal to the Borough Justices. In all other cases relating to settlement of paupers the appeal is to the County Sessions. Then the 111th section of the 5 & 6 Will. IV. c. 76, preserves to the County Justices all their exclusive jurisdiction ; and the other matters referred to in section 105 must be restricted to matters *ejusdem generis* with those previously mentioned.

The Court took time to consider.

Lord Denman, C. J., afterwards delivered the judgment.— After adverting to sections 46 and 61 of the 9 Geo. IV. c. 40, his Lordship continued—

“ Now the matter of appeal here was the order made by two
“ Justices in the borough of Ludlow ; therefore, reading the
“ word ‘ county ’ as ‘ town corporate,’ it seems that the appeal is
“ given to the Borough Sessions. But whether this would or
“ would not have been the case if the old corporation had con-
“ tinued, we have no doubt that it is so as the law now stands.
“ The powers of the Recorder in Court of Quarter Sessions
“ are created by the 105th section of the 5 & 6 Will. IV. c. 76,
“ and give him cognizance of all matters whatsoever cognizable
“ by any Court of Quarter Sessions of the Peace for the counties
“ in England, among which unquestionably the present matter
“ is one. The recent grant of his late Majesty cannot make
“ any difference, for it does not limit or confine the operation
“ of the Statute 5 & 6 Will. IV. c. 76 ; indeed, all the words

“ in that grant, relating to the duties of the Recorder, seem to
“ be mere surplusage.”

Order of Sessions confirmed.

Jurisdiction to hear Appeals in Municipal Corporate Boroughs.

Q. v. St. Edmund's, Sarum. 1 G. & D. 137: S. C. 10 L. J. R. (n. s.)
M. C. 138.

APPEAL to the Quarter Sessions of the county of Wilts, against an order of removal from the parish of St. Edmund's, Sarum, in the Municipal Corporate Borough of Salisbury. It was objected that the appeal ought to have been to the Sessions of the borough, which before the passing of the Municipal Corporation Act, 5 & 6 Will. IV. c. 76, possessed a charter, with a non-intromittant clause; and, since that Act, had obtained the grant of a separate Court of Quarter Sessions to be held before a Recorder. The Borough Sessions occurred before the county Sessions. The Sessions overruled the objection, and, as the respondents were not prepared, quashed the order.

In support of their order it was contended that the Justices of the county had at least a concurrent jurisdiction with the Recorder of the borough. The 8 & 9 Will. III. c. 30, s. 6, enacted that such appeals should be tried at the County Sessions, and no Borough Sessions could thenceforth try them. The 5 & 6 Will. IV. c. 76, s. 105, gives to the Recorder cognizance of all matters cognizable by the County Sessions. This is an affirmative enactment, and does not operate as a repeal of the former Statute. Either the Recorder may try all questions except appeals against orders of removal, or he has no concurrent jurisdiction with the County Justices.

Contrà, it was argued that the Municipal Corporation Act operated as a repeal of the Statute of Will. III., and therefore the County Justices had no jurisdiction. But if they had a concurrent jurisdiction, the Borough Sessions were earlier, and the appeal ought to have been heard there.

The Court took time to deliberate.

Lord Denman, C. J., afterwards delivered the judgment of

the Court.—“ * * * The question is, whether the 8 & 9 Will. III., which clearly applied to Salisbury before, has been kept alive for the purpose of this trial, notwithstanding the recent charter.

“ Much learning and great ingenuity were employed in maintaining the affirmative of this proposition; but while we hold that a positive enactment is not to be repealed by inference, we must also act on the maxim *Leges posteriores priores contrarias abrogant* wherever it comes into operation. Here the Quarter Session of the city under its former charters was deprived of the cognizance of appeals against orders of removal by the 8 & 9 Will. III. But the Municipal Corporation Act gives to the City Sessions all the jurisdiction, and to the Recorder all the power, that formerly belonged not to the Quarter Sessions of a town corporate, but to any County Quarter Sessions. The use of these words, without reference to the 8 & 9 Will. 3, might raise an argument that that Act was not in the contemplation of the Parliament of 5 & 6 Will. IV., though most probably it was; for the strongest objection to local Justices of the Peace was removed by the appointment of a single judicial officer: but even if this intention were doubtful, the words are not—they give the Recorder the trial of all matters that could be tried by a County Session. This appeal is one of those matters: it is therefore given to the Recorder; and the words ‘not elsewhere,’ in the Statute of Will. III., being contrary, are abrogated. It does not follow that there might not be a concurrence of jurisdiction; but if there is, the Borough Sessions were holden earlier than those of the County, and the appeal ought to have been to the former.”

Order of Sessions quashed.

Q. v. Justices of Salop. Q. v. Justices of Lancashire. Q. v. Justices of Suffolk.
1 G. & D. 146: S. C. 10 L. J. R. (n. s.) M. C. 138.

IN these cases the same conflict of jurisdiction occurred, though the point was raised in different counties. It became necessary, however, for the Court to determine whether the Recorder had

an exclusive jurisdiction; and after time for deliberation had been taken,

Lord Denman, C. J., delivered the judgment.—“ * * *
 “ We have lately shown and held that the exclusive words in the
 “ 8 & 9 Will. III. c. 30, are abrogated by the 105th clause of
 “ the Municipal Reform Act, which lodges in the hands of the
 “ Recorder all the powers and functions, with some specified
 “ exceptions, that had been transferred to the County Sessions
 “ by the Act of Will. III.

“ * * * The rules for interpreting Statutes have been
 “ much discussed in these arguments; but we apprehend that,
 “ in applying them to questions on the effect of an enactment,
 “ we can never safely lose sight of its object. We have already
 “ referred to that of the Statute of Will. III. It was to deprive
 “ the Borough Sessions of their power in certain cases, and this
 “ is effected by giving it exclusively to the County Sessions.
 “ Parliament, in William III.’s time, may be supposed to
 “ address the Borough Justices of the Peace: ‘We cannot trust
 “ you with this power: we take it from you, and authorise the
 “ County Justices of the Peace to act in your place.’ But
 “ the Parliament of William IV. holds the opposite lan-
 “ guage: ‘We wish you to be restored to the jurisdiction of
 “ which you were deprived, and have taken effectual means to
 “ prevent the abuse which led to the deprivation.’ Since, then,
 “ the object is directly reversed, and the Borough Sessions em-
 “ powered to act, we cannot reasonably doubt that Parlia-
 “ ment designed to put an end to that power, which had been
 “ for the first time given to a foreign body for the purpose of
 “ supplying the deficiency of judicature which the exclusion had
 “ caused.

* * *

“ Upon the whole we think that the Quarter Sessions for the
 “ borough of Shrewsbury had *exclusive* right to try the present
 “ appeal.”

Judgment in the several cases accordingly.

Appeal against Orders for Maintenance of Lunatics—Notice of Appeal.

Q. v. The Justices of Kent. 2 G. & D. 152: S. C. 11 L. J. R. (n. s.) M. C. 27.

Two Justices made an order under the 9 Geo. IV. c. 40, § 42, whereby they adjudicated the settlement of a pauper lunatic, previously removed to a lunatic asylum, to be in the parish of St. Nicholas, Deptford. The overseers of this parish appealed to the Quarter Sessions, giving their notice of appeal to the Clerk of the Peace for the county. The Sessions held that notice ought to have been given to the Justices who made the order, and dismissed the appeal. A rule for a *mandamus* to the Justices to hear the appeal had been obtained.

Against which it was argued that the notice which had been given under the 54th section was insufficient, as the case was one to which the 46th section applied, which provides that, if any person shall feel aggrieved by any order, the notice of appeal shall be given to the Justices. It was urged that section 54 was confined to cases of criminal lunatics.

Lord Denman, C. J.—" * * * The words of the appeal
 " clause in section 54 are large enough to include this case,
 " and, notwithstanding the position of the section, may relate
 " back to the 42nd section. It is said that we cannot leap
 " over the intermediate appeal section in the 46th section,
 " which will include this case. But I think the 46th section * *
 " applies only to the cases in the 44th and 45th sections, the
 " cases of lunatics wandering about the country, and to other
 " cases where an *individual* is affected by an order, or by the
 " refusal of an order. The present is not such a case, but
 " involves a question between the parish upon which the order
 " to maintain the pauper has been made, on the one hand, and
 " the county, on the other, upon which the burden of main-
 " taining the pauper will be cast if the order is quashed. The
 " appellants in the case are the churchwardens and overseers
 " of the parish, and the county is represented by the Clerk of
 " the Peace as its officer. * * * "

Patteson, J.—" * * * I think that the appeal clause in the
 " 54th section applies to orders made under the 42nd section,
 " and that there is no difference in this respect between criminal
 " and pauper lunatics; in either case the contest is between
 " the county and the parish. Section 46 appears to apply to
 " the cases in the 44th and 45th sections only. * * * "

Coleridge, J.—" * * * Under sections 44 and 45 indi-
 " vidual interests are concerned, either by the making or
 " refusing an order which adjudges a party to be disordered
 " in his senses, and that his property may be seized. There
 " is, therefore, abundant room in such cases for individual
 " grievance, and it is right that the Justices should have notice
 " of appeal against their order. The appeal clause, therefore,
 " in section 46 has something to act upon, without reference to
 " the 42nd section. * * * "

Rule absolute.

*Appeal against Order for Maintenance of a Lunatic—
 When to be made.*

Q. v. Holdsworth. 1 A. & E. (n. s.) 221 : S. C. 1 G. & D. 442 : 10 L. J. R.
 (n. s.) M. C. 57.

Two Justices, on the 16th of September, 1837, made an order under the 9 Geo. IV. c. 40, § 38 & 41, for the removal of one M. F. H., a lunatic pauper chargeable to the township of Doncaster, to the West Riding Lunatic Asylum, and ordered the overseers of the township to pay the treasurer of the Asylum for the maintenance of such pauper. To this order there was a postscript, that the expense was to be charged to the Riding, in consequence of the settlement being unknown. Two other Justices, on the 6th of December, 1838, made another order, under section 42 of the Statute, which recited the former order, and that the settlement of M. F. H. was not then ascertained, and alleged that they had inquired into the settlement, and had obtained satisfactory evidence of it. They then adjudged it to be in the township of Doncaster, and ordered the overseers of that township to repay to the treasurer of the Riding a certain sum for the maintenance of M. F. H.

during her previous maintenance in the Asylum, and a weekly sum for her future maintenance.

There was an appeal against this order, on the ground that M. F. H. was not on the 16th of September, 1837, chargeable to the township of Doncaster. It was answered that no such question was now open, as the order of that date was not appealed against. The Sessions required proof of chargeability to be given.

It was then proved that the lunatic had shortly before September 16th, 1837, been committed to Doncaster gaol for a breach of the peace, and while detained there for want of sureties was found to be insane; and, having no visible means of support, the assistant-overseer of Doncaster applied to the two Justices to commit her to the West Riding Asylum, under 9 Geo. IV. c. 40, § 38, which was done.

The Sessions held that it was necessary for the respondents to show an actual giving of relief.

In support of their judgment it was contended that the question as to the chargeability was still open. Though the 9 Geo. IV. c. 40, § 46, gives an appeal to any person who is aggrieved by any order of Justices, there was no grievance to the present appellants. The 41st section makes the expense a charge upon the county treasurer, therefore the township was not affected by the order, as it did not adjudicate the settlement. When that was ascertained and adjudged, a grievance arose which was the ground of an appeal, and on that appeal it might be shown that the first order was made without jurisdiction. It is true that the assistant-overseer took the pauper before the Justices, as the best course to be pursued in the difficulty which had occurred.

Patteson, J., observed—"It would appear by sections 38 and 45 that the Justice is to inquire into the sanity, but to take the chargeability for granted, on the responsibility of the overseer."

It is also not clear that the first order was obtained on the information of the overseers; as by section 38 the Justices may

have notice from the overseers, *or otherwise* they cannot be concluded by an order which they did not obtain.

Lord Denman, C. J.—" * * * The second order must be " taken to state truly that the first was made on complaint of " the overseers of Doncaster. If it can be suggested that some " other parties personated the overseers, or untruly pretended " to act with their authority, the township might have appealed " against the first order on that ground. That order, not " appealed against, was conclusive upon Doncaster as to the " *chargeability*, though not as to the *settlement*."

Order of Sessions quashed.

Appeal against Orders of Removal—Inhabitants cannot appeal.

Q. v. Colbeck and others. 12 A. & E. 161: S. C. 3 P. & D. 488: 9 L. J. R. (n. s.) M. C. 61.

THREE persons, being inhabitants and rate-payers of the township of Black Callerton, appealed against an order of removal of a pauper to their township, giving notice of appeal in their own names as persons aggrieved, and a statement of the ground of appeal. The Sessions confirmed the order of removal, on the ground that the appellants were not entitled to be heard in support of the appeal.

Against the order of the Sessions the 13 & 14 Ch. II. c. 12, § 2, and 3 & 4 Will. III. c. 11, § 9, which give appeals against orders of removal to any persons who find themselves aggrieved thereby, were cited, and it was contended that an individual rate-payer is a person aggrieved by an improper removal to his parish, and that the provision as to the notice required by the 4 & 5 Will. IV. c. 76, § 81, could not have the effect of indirectly repealing these enactments. A pauper may appeal against an order of removal, and where there were no churchwardens and overseers the Court of Queen's Bench refused to quash an order of Sessions, quashing an order on an appeal by three inhabitants.

Lord Denman, C. J.—" If there be any case in which the

“ Court would be justified in extending the right of appeal to
 “ an inhabitant, it certainly would be where there was no other
 “ remedy. That was the case in *R. v. The Justices of Den-*
 “ *highshire*, 1 B. & Ad. 616; whether the Court did right
 “ there we need not now consider, but if the appeal had not
 “ been allowed the whole township would have suffered. But
 “ where there are parish officers there can be no doubt that
 “ they represent the parish for the purpose of giving notice of
 “ appeal, otherwise the inconvenience would be monstrous; for
 “ every individual parishioner might appeal, and on different
 “ grounds. The Statutes, particularly the 4 & 5 Will. IV.
 “ c. 76, appear to assume that parish officers represent the
 “ parish. We cannot suppose that they will neglect their
 “ duty: if they should do so they would be amenable to the
 “ Court.”

Littledale, J.—“ * * * It is reasonable that the pauper
 “ should have the power of appeal, for there may be inconve-
 “ nience to him in being detained in any particular parish, or
 “ he may be aggrieved by being sent about from one to the
 “ other. But as to individual parishes, it appears, from *Weston*
 “ *Rivers v. St. Peters Marlborough*, 2 Salk. 492, that the
 “ removal should be made on the complaint of those who have
 “ authority to represent the parish. * * *

Patteson, J.—“ Statute 9 Geo. I. c. 7, § 8, is of itself suffi-
 “ cient to show that individual parishioners cannot appeal.
 “ * * * Even supposing that this Statute does not apply, it is
 “ plain that the legislature recently has intended that none
 “ but the parish officers should appeal, for in the case of ap-
 “ peals by individual parishioners it would be quite impossible
 “ to work the provisions of the 4 & 5 Will. IV. c. 76.

Williams, J.—“ * * * The argument from convenience is
 “ wholly on the same side, more especially since the incorpo-
 “ ration of large districts has been prevalent.”

Order of Sessions affirmed.

Notice of Appeal—By whom signed.

Q. v. Justices of Cheshire. 8 D. P. C. 617.

THE notice of appeal against an order of removal, and the statement of the grounds thereof, were signed by one overseer only, the former beginning, "We, the undersigned churchwardens and overseers of," &c. The Sessions held that the notice was insufficient, as there could not be an appointment of one overseer only. It was then shown that two overseers had been appointed, but that one had never acted, claiming to be exempt as a registrar of births, deaths, and marriages. The Sessions were nevertheless of opinion that the appointment of the one overseer was bad, and dismissed the appeal.

A rule had been obtained for a *mandamus* to the Justices to hear the appeal, against which it was urged that, the Sessions having heard and decided this case, the Court of Queen's Bench had no right to interfere with the decision.

Coleridge, J.—" * * * In this case the Court of Quarter Sessions has refused to hear this appeal on a preliminary point. Where that has been done this Court may interfere. The next point is, whether I am to take the evidence subsequently given? I think that I must. For the Court, by allowing the witness to be examined, took the evidence into account in the decision it pronounced. The case is this: there was an appointment of two overseers by the Justices in Petty Sessions; and *primâ facie*, therefore, the overseers were a well-constituted body. It is said that one of the overseers has claimed an exemption that renders his appointment a nullity. Now I cannot say that that is the case. * * * If there is any such exemption, the party should have gone before the proper tribunal, and made his appeal against the appointment. He has not done so, and therefore he was a good overseer."

Rule absolute.

Notice—when in time.

Q. v. The Justices of Herefordshire. 8 D. P. C. 638.

AN order of removal from Leominster to Llantillio Pertholdy was served on the 18th of March, 1838. The Herefordshire Sessions were held on the 8th of April, and on the 4th notice of appeal for the next Sessions but one was served. No appeal was entered at the April Sessions, and at the Midsummer Sessions the Court held that the appellants were not in time, and dismissed the appeal. The pauper had not been removed. A rule *nisi* for a *mandamus* to the Justices to hear the appeal had been obtained on affidavits, which, in addition to the above facts, stated that the appellants were delayed in consequence of their attorney not being able to see a witness.

Against the rule it was urged, first, that this Court could not hear this excuse, as it was not brought before the Sessions. Then, the order having been served in time for a notice to be given before the next Sessions, namely, the April Sessions, the appeal ought to have been tried there. The 4 & 5 Will. IV. c. 76, § 79, which gives to the appellants twenty-one days to deliberate whether they will appeal or not, has not altered the law in regard to the Sessions at which the appeal is to be tried.

In support of the rule this section of the Poor Law Amendment Act was relied on, and it was contended that the appellants were not bound to determine whether they would appeal until twenty-one days had elapsed; and, consequently, as they did not so determine until the 4th of April, they could give the requisite notice before the 8th, consequently the Midsummer were the next practicable Sessions.

Williams, J.—" * * * The object of the Act of Parliament " was to prevent the nuisance of a removal of a person or persons, perhaps from Cumberland to Cornwall, where it was to " be *retrò* on the decision of the appeal, by which much personal mortification of individuals, and expenditure on the " part of parishes, became quite superfluous. It was therefore

“ the intention of the legislature to prevent the removal on one
 “ supposition, and the removal back on that supposition failing.
 “ This, as it seems to me, was a very beneficial regulation.
 “ The term of twenty-one days is prescribed, within which, if
 “ nothing more occurs, the pauper shall not be removed.
 “ What is the meaning of that provision? The first proviso
 “ in the section shows. It is there enacted that there may be
 “ a removal within the twenty-one days, if there is an acknow-
 “ ledgment on the part of the parish officers to whom the order
 “ is directed that the pauper belongs to them, and that they
 “ are ready to receive the pauper. The order, however, is not
 “ to be executed if the opposite parish shows any repugnance
 “ to its execution. That is, that the parish to whom the order
 “ is directed has twenty-one days to exercise its judgment
 “ whether it will appeal, but there is nothing to hinder a
 “ determination within less time. Here, it appears, the parish
 “ came to a determination to appeal against the order of re-
 “ moval on the 4th of April, which was within the twenty-one
 “ days. On the 8th the Sessions were held, and seven days’
 “ actual notice was required by the practice. There was, con-
 “ sequently, no possibility of trying the appeal at the Easter
 “ Sessions; they were, therefore, not the next practicable
 “ Sessions. No notice could be taken of them except for the
 “ purpose of entering and respiting the appeal, which would
 “ be a grievous waste of time and money. The next practicable
 “ Sessions, therefore, were the Midsummer Sessions. * * * ”

Rule absolute.

Q. v. Justices of Middlesex. 9 D. P. C. 163.

AN order of removal was made, on the 21st of June, 1838, to
 Hingham, in Norfolk, from the parish of St. Leonard, Shore-
 ditch, and was sent to the appellant parish on the following
 day. On the 27th of June the parish officers of Hingham sent
 notice of appeal, but did not state at what Sessions they would
 try it. With the notice a certificate of marriage was sent,
 which showed that the settlement was in another parish. No
 further step was taken by the appellant parish. In April,

1839, the pauper was removed. A fresh notice of appeal was given for the July Sessions, but the Sessions refused to hear the appeal.

A rule *nisi* had been obtained for a *mandamus* to the Justices to hear the appeal, against which it was contended that, as the appellants had availed themselves of the provision in the 4 & 5 Will. IV. c. 76, § 79, by giving notice within twenty-one days after the service of the order, and before the actual removal, they could not afterwards resort to the power of appeal given by the 13 and 14 Ch. II. c. 14, when the pauper was removed, and therefore the appeal ought to have been tried at the October Sessions in 1838.

In support of the rule it was argued that the appellants had not lost the right of appeal given by the Statute of Charles, because they had given the notice within the time specified by the Poor Law Amendment Act. That notice, not being acted upon, was in fact abandoned; and they were remitted to their rights as they existed independent of that Statute. Then by the former law they were entitled to appeal upon the actual removal of the pauper.

The Court took time to consider.

Patteson, J., afterwards gave judgment—" * * * The Court
" has several times held that the parish officers are not bound
" to avail themselves of the 79th section, but may suffer the
" twenty-one days to elapse, and appeal to the next Sessions
" after the actual removal. They have considered that the
" appellant parish may treat itself as a party aggrieved by the
" order of removal before actual removal, by the necessary
" operation of the enactments of the 4 & 5 Will. IV. c. 76, or
" may wait until they are aggrieved by the actual removal.
" * * * I have no doubt that, if the appellant parish had
" lodged and prosecuted an appeal in pursuance of their notice,
" and had failed, whether on a point of form or on the merits,
" and the pauper had been afterwards removed, as the 79th
" section directs, the appellant parish could not have appealed
" again. * * * * Looking at all the enactments of 4 & 5

“ Will. IV. c. 76, relating to this subject, and not finding
 “ anything which shows that the legislature intended a notice
 “ of appeal, not followed up and prosecuted, to deprive the
 “ appellant parish of its remedy upon the actual removal of
 “ the pauper, and finding no absurdity or inconsistency in
 “ holding that it did not so intend, I feel myself bound to hold
 “ that the appellant parish might expressly or tacitly abandon
 “ their first notice of appeal, and take their remedy after the
 “ actual removal. I am therefore of opinion that the appellant
 “ parish was not too late, and that this rule must be made
 “ absolute.”

Rule absolute.

Q. v. Justices of Cheshire. 1 Dowl. P. C. (n. s.) 570 : S. C. 11 L. J. R. (n. s.)
 M. C. 84.

AN order of removal was made on the 22nd of February, 1841, and on the 25th the requisite copies were sent by post. The next Sessions were held on the 29th of March. No notice of appeal having been given within the twenty-one days, the pauper was removed on the 12th of April. At the Midsummer Sessions the appellants entered and respited an appeal, and afterwards gave notice of trying the appeal at the October Sessions. The Justices then held that they were too late, and refused to hear the appeal. A rule for a *mandamus* had been obtained, on the ground that a parish has a right to appeal upon the actual removal of the pauper.

On the argument this was conceded ; but it was contended against the rule that the appellants had no right to enter and respite the appeal at the Midsummer Sessions, but should have tried the appeal then.

Wightman, J.—“ On the authority of Q. v. The Justices of Middlesex, 9 Dowl. P. C. 163,* I think that the circumstance
 “ of the order being made before the March Sessions would
 “ not preclude the parties from entering and respiting the ap-
 “ peal at the Midsummer sessions.”

Rule absolute.

* *Ante*, page 178.

Notice—immaterial defect.

Q. v. Justices of Denbighshire. 9 D. P. C. 509: S. C. 10 L. J. R. (n. s.)
M. C. 79.

AN order of removal from Ruabon to Llangollen was made by B. Cunliffe and E. L. Kenyon, two Justices of the county of Denbigh: the notice of appeal described it as an order of R. H. Cunliffe and E. L. Kenyon, two Justices of the Peace for the county of Denbigh. This variance was objected to at the Sessions, and held to be fatal. The Sessions dismissed the appeal.

A rule *nisi* for a *mandamus* to the Justices to hear the appeal had been obtained, against which it was contended that this was not a mere misnomer, but a fatal variance, amounting to a misdescription of the order. It was also shown by affidavits that there was a Justice of the Peace named Sir R. H. Cunliffe, Bart., acting for the county.

Williams, J.—"The question is, whether this is such a total
" variance in the description of the order as to show that this
" was a forgery, and that there was no order of removal at all
" corresponding with the one mentioned in the notice of appeal.
" The parties to the order and the pauper are correctly de-
" scribed. Who could doubt that this was a valid order, made
" by persons of competent authority? It is a perversion of
" terms to consider this like a description in pleading; it is
" nothing of the kind. The object of the notice of appeal is to
" give the opposite party notice that the appellants have been
" aggrieved by an order of removal perfectly agreeing, in de-
" scription and other respects, with the one actually made.
" But the Sessions have got into *apices juris*, and nice ques-
" tions of variance, instead of doing what would be more
" consonant with the justice of the case. It was quite unne-
" cessary that they should consider such nice points."

Rule absolute.

Adjournment of the Appeal not compellable.

Q. v. The Justices of Staffordshire. 12 L. J. R. (n. s.) M. C. 9.

AN order of removal was served on the 29th of July, notice of appeal on the 18th of August, and the statement of the grounds of appeal on the 1st of October. At the Sessions held on the 19th of October the appellants, finding their statement insufficient, applied for leave to adjourn the appeal upon payment of costs; but the Court refused to do so, as no authority for such adjournment could be shown to them, and confirmed the order. A rule for a *mandamus* to the Sessions to hear the appeal had been obtained, against which cause was shown; and it was contended that, as the Sessions had not granted a case to raise the question, this Court would not issue a *mandamus* to compel them to review their judgment.

In support of the rule it was argued that the Sessions, in effect, had decided the point, on the ground that they could not adjourn the appeal, which would be a very inconvenient doctrine. The decision of the Sessions had taken place on a point of form, in which they were wrong.

Wightman, J.—“ I feel here the difficulty, that the Court “ of Quarter Sessions have decided the case, and have not re- “ served the point; unless, therefore, they were *bound* to ad- “ journ the appeal, I cannot interfere, and I do not think they “ were bound.”

Rule discharged with costs.

Trial of the Appeal—Preliminary requisite—Production of the Order.

Q. v. Justices of Sussex. 9 D. P. C. 125.

ON the trial of an appeal between the parishes of Dallington and Burwash at the Sussex Quarter Sessions, the appellants were required, as a preliminary step, to produce the order of removal. The original order was not in Court, and the appellants had not given notice to the respondents to produce it. They proposed to read the copy which was filed with the

Clerk of the Peace. But the Sessions held that this was only secondary evidence, that the original order should have been produced, and dismissed the appeal.

A rule for a *mandamus* to the Justices to hear the appeal had been moved for, against which it was argued that the decision of the Sessions, in requiring the appellants to produce the order, was correct, according to the practice, and that the copy was properly rejected, as only secondary evidence.

In support of the rule the 4 & 5 Will. IV. c. 76, § 79, was relied on, as showing that the copy sent to the appellants was good evidence against the respondents of the order; and that, if not, the respondents ought to have produced the original without any notice to produce, as, from the nature of the proceeding, they ought to have had it with them.

Patteson, J., referred to the passage in Burn's Just., title, *Sessions of the Peace*, on this point, and continued—"If the
" production of the order of removal, or a copy thereof, after
" notice, be considered as evidence given by the appellants in
" the course of the hearing of the appeal, this Court cannot
" interfere. * * * But if it be a preliminary matter of prac-
" tice, like a notice of appeal and similar matters, this Court
" will interfere if they think the Sessions wrong. * * * I
" think that this is a case of the latter description, and that
" this Court has power to inquire into the matter. I find
" nothing to contradict the passage in Burn's Justice as to the
" practice on the old law, nor can I see anything unreasonable
" in it; and therefore I think that the case is reduced to the
" simple question, whether the 4 & 5 Will. IV. c. 76, § 79 &
" 81, has altered the law so materially as to render the prac-
" tice no longer applicable or legal? The 79th section directs
" that the removing parish shall give notice of chargeability,
" accompanied with a copy or counterpart of the order of re-
" moval. This is all, and I do not see that it imposes any new
" duty on either party as regards proceedings at the Sessions,
" or gives any effect to the orders of removal, or a copy, differ-
" ent from what they had before the Statute was passed.

“ Under these circumstances, I do not think that the Sessions
 “ have come to a wrong conclusion, and am of opinion that I
 “ cannot interfere with it.”

Rule discharged.

Statement of the Grounds of Appeal—Sufficient.

Q. v. Justices of Carnarvonshire. 1 G. & D. 423: S. C. 11 L. J. R. (n. s.) 3.

A STATEMENT of the grounds of appeal alleged that the respondent parish had acknowledged the said D. R. to be legally settled in their parish, by relieving him and his family, from time to time during the last six years, whilst he was resident out of their parish, and particularly by giving relief to him several times in the years 1839 and 1840, during which time he and his family were residing at Liverpool.

The Sessions held this statement to be insufficient, and confirmed the order.

A rule for a *mandamus* to the Justices to hear the appeal had been obtained, against which it was argued, first, that the statement was too general and vague. The facts alleged do not necessarily lead to the inference of a settlement in the respondents' parish, but if they do the party should have stated it positively. Then the time should have been expressed with certainty, as well as the places where the relief was given; and the mention of Liverpool is not sufficiently explicit. Secondly, the Sessions have decided this point: they are the proper judges of this fact, and their judgment is conclusive.

Williams, J.—“ The third ground of appeal states that the
 “ appellants proposed to prove relief given by the respondents
 “ out of their parish. The argument against the sufficiency of
 “ it goes to exclude evidence of the most cogent description
 “ that the pauper was settled therein. This statement satisfies
 “ the object of the Act, which was, that parties at the trial of
 “ the appeal should not be taken by surprise. The Sessions
 “ having declined to hear the appeal altogether, I am of opinion
 “ that this rule should be made absolute.”

Coleridge, J.—“ There may be judicial observations some-

“ what conflicting upon the question, whether the Sessions may
 “ take upon themselves to determine finally the sufficiency of
 “ the statement of the grounds of appeal : the authorities, how-
 “ ever, appear conclusive that, when the Sessions have declined
 “ to hear a case on a preliminary objection shutting out the
 “ merits of the case, their decision may be reviewed by this
 “ Court. If the Sessions go into the case, their decision upon
 “ the facts is without appeal.

* * *

“ On the other point I agree with my brother Williams. The
 “ statement appears, in perfect good faith, to state a matter
 “ more within the knowledge of the respondents than of the
 “ appellants. It, in effect, says, I object to the removal of
 “ the pauper, because your parish has always acted as if he
 “ were settled within it. It gives adequate information of the
 “ strong *primâ facie* case which the appellants propose to
 “ prove, that the respondents have relieved the pauper repeatedly
 “ out of their parish. The times, sums, and places are all
 “ more within the knowledge of the respondents than of the
 “ appellants. I think there is nothing in the objection that
 “ the statement does not in terms assert a particular settle-
 “ ment. Proof of those facts stated would constitute a *primâ*
 “ *facie* case, without evidence of any particular settlement.”

Wightman. J.—“ It is clearly settled that, if the Sessions,
 “ on a preliminary point, come to an erroneous decision,
 “ shutting out the merits, this Court will always interfere.
 “ The third ground of appeal gives the particulars of facts
 “ much better known to the respondents than to the appellants,
 “ which, if proved, would establish a *primâ facie* case against
 “ the respondent parish.”

Rule absolute.

Statement of the Grounds of Appeal—Insufficient.

Q. v. Justices of Sussex. 3 P. & D. 42: S. C. 10 A. & E. 682: 9 L. J. R. (n. s.)
 M. C. 22.

THE appellants, in the statement of their grounds of appeal, stated that subsequent to the alleged settlement in their parish

the pauper acquired a settlement in the parish of Ticehurst, by having, in or about the year 1830, paid parochial rates in respect of a tenement in the said parish of Ticehurst, rented by the pauper at the sum of 15*l.* a-year for a whole year, and occupied by him for more than a year. The Sessions held that the notice was insufficient, as it did not give the name of the landlord nor the locality of the tenement, and dismissed the appeal.

A rule *nisi* had been obtained for a *mandamus* to the Sessions to hear the appeal, against which it was argued that the appellants had not afforded sufficient information to the respondents to enable them to ascertain the truth of the alleged settlement.

In support of the rule it was contended that the statement clearly pointed out the nature of the case intended to be set up, and that a clue was given to the respondents, by which they would have been able to determine the question. They could have searched the rate-books in 1830, and discovered for what property the pauper was rated.

Lord Denman, C. J.—"On consideration I do not think that
" a description of the tenement by name or abuttals is required;
" because there might be some difficulty with such a rule
" in all cases, though as a matter of propriety I think the
" name ought to be given wherever it can. I have no doubt
" that the name of the landlord ought to be given, for it is
" clear that there might be two hirings for which the tenant's
" name might appear on the rate-books; and therefore, if the
" landlord's name be not given, the respondents might often be
" misled."

Coleridge, J.—"The precision required in the statement of
" the grounds of appeal may perhaps be different with regard
" to an agricultural or metropolitan parish: in the latter, the
" house ought to be described by street and number, or other
" mode, so as to enable the respondents to discover and make
" inquiries at the place indicated. In an agricultural parish
" this could not well be; but in both cases the principle on

“ which the grounds of appeal should be framed is the same.
 “ I have no doubt that, in a rural parish, the name of the land-
 “ lord ought to be given.”

Order of Sessions confirmed.

Q. v. Bridgewater. 1 G. & D. 265 : S. C. 10 A. & E. 693 : 10 L. J. R. (n. s.)
 M. C. 42.

THE ground of appeal set forth in the statement was, that the pauper had gained a settlement by servitude in the respondent parish, being a hired servant of C. K., of Bridgewater, for a period exceeding one year; and had not, since such servitude, obtained a settlement in the appellant parish.

At the Sessions it was objected that the statement was insufficient, as it did not set forth the date of the service. The Sessions overruled the objection; and, the settlement by hiring and service in 1825-6 being proved, quashed the order.

In support of their decision it was contended that, as the name of the master was given, sufficient was done to put the respondents in a train of inquiry and enable them to meet the case. The time of the service is not essential.

Lord Denman, C. J.—“ It appears to me to be necessary to
 “ state the grounds of appeal, as far as they are known. It
 “ would be dangerous to admit a generality of statement which
 “ might require an inquiry by the respondents through a period
 “ of fifty years. The greater the obscurity attending the facts,
 “ the more incumbent it is on the appellants to give as much
 “ information as possible.”

Littledale, J.—“ There may be, no doubt, inconveniences in
 “ giving statements as to time with great particularity. A ser-
 “ vice might be stated at a particular period inaccurately in
 “ some degree; and it might be proved that the alleged master
 “ was at that particular time dead; and thus greater difficulty
 “ would be thrown in the way of the appellants: but on the
 “ whole I think there are more inconveniences on the other
 “ side. If the required particulars cannot be given, some reason
 “ may be assigned why they were omitted.”

Patteson, J.—“ In cases of settlement by hiring and service,

“ the name of the master and the day may easily be given ; and
 “ in general, if they are not, I should impute the omission to
 “ some sinister motive.”

Coleridge, J.—“ It is clearly not enough to show *the cause*
 “ of appeal ; the Statute requires *the ground* of appeal also to
 “ be given. The proviso* shows the intention of the legislature
 “ to require information to be given of the kind of case on which
 “ the appellants mean to rely, and to the proof of which alone
 “ they are confined, so that the respondents may be prepared.
 “ I have some doubt whether the information given in this case
 “ was sufficient ; but, if it is necessary for us to lay down a rule,
 “ I think it better to say that the date of the service should be
 “ mentioned as well as the name of the master. I think, how-
 “ ever, that the Sessions would do well to constitute themselves
 “ the judges of the particularity requisite.”

Order of Sessions quashed.

Q. v. Bovey North. 1 G. & D. 701 : *S. C.* 11 L. J. R. (n. s.) M. C. 71.

THE examination of the pauper, having shown a settlement in the appellant parish, stated that he agreed to serve E. S., of the parish of Ashton, for a month, at 3s. a-week ; that when the month was up he agreed to live on at the same wages by the month ; that the bargain was to be at an end at any time by a month's warning from either party ; that he continued under that agreement nearly two years, and left his place by giving a month's notice. The ground of appeal was, “ that
 “ the pauper acquired a settlement in the parish of Ashton,
 “ by hiring and service with one E. S., of, &c., in the said
 “ parish, subsequently to that acquired in our parish.” It was objected that this statement was insufficient, on the ground, first, that no time was given to the hiring and service ; and, secondly, that there was no sufficient statement of a hiring and service for a year. The Sessions overruled the first objection, as they were of opinion that the parties had set forth *bonâ fide* all that they knew, but admitted the second objection, and confirmed the order.

* 4 & 5 Will. IV., c. 76, § 81.

In support of their ruling, those objections were relied on, and the case of *Q. v. Middleton-in-Teesdale*,* as an express authority that the essentials of the alleged settlement were not sufficiently stated; that there was no sufficient reference in the statement to the facts alleged in the examination; and if there were, those facts did not detail a complete settlement.

Contrà, it was contended that the notice of appeal need not be so strictly framed as the examination on which the removal takes place, inasmuch as the latter must show a complete settlement, whereas the statement of the appellants need merely give a notice of the kind of settlement to be set up in answer. Here a settlement by hiring and service is set up, and all the information in the possession of the appellants is given.

Lord Denman, C. J.—"The question is, whether the notice
 "of appeal discloses any settlement at all. Parish officers must
 "give all the information they can. It is quite clear, when
 "appellants meet an examination by setting up a subsequent
 "settlement, the settlement set up must be shown to be a com-
 "plete settlement. It is argued that, where the appellants set
 "up a settlement by hiring and service, it cannot be inferred
 "that the hiring can be anything else than a hiring for a year.
 "But why is anything to be left to inference? * * *

Patteson, J.—"If this statement be looked at by itself as
 "unconnected with the examination, it is wanting in proper
 "particularity of time, and is clearly bad. * * * If it
 "had said expressly that the subsequent settlement had been
 "gained by the hiring and service mentioned in the examina-
 "tion, a different question would have arisen. It might then
 "have been for the Sessions to say whether, on the facts, there
 "had been a hiring for a year. But as the notice now is, the
 "hiring relied on by the appellants may be a different hiring
 "from that in the examination, for the examination is not re-
 "ferred to. The notice of appeal should have shown such a
 "hiring as would give a settlement."

* *Ante*, page 141.

Williams, J.—"The meaning of the Court has been that, "as well in the statement of the grounds of appeal as in the "examination, a complete settlement should be set out, and "that there should be given explicitly all such information as "may be requisite to regulate the conduct of the adverse party, "to whom the document is sent."

Order of Sessions confirmed.

Q. v. Justices of West Riding of Yorkshire.

(*In re Drighlington v. Pudsey*).

1 G. & D. 706 : S. C. 11 L. J. R. (n. s.) M. C. 80.

THE statement of the grounds of appeal against an order of removal was, that "the husband of the pauper, in or about the "years 1828, 1829, or 1830, some or one of them, or some parts "of some two of such years, did rent *and occupy*, for the space "of twelve months and upwards, a *house* and land, at and in "the township of Pudsey, as tenant to one Mr. C., of the yearly "rent and value of 10*l.*, and did pay upwards of 10*l.* rent for "the same, and did thereby gain a settlement in the said town- "ship." It was objected that the statement did not allege a residence in the township, and the Sessions held the objection fatal, and confirmed the order. This was on the 6th of January, 1842. In Easter Term following a rule for a *mandamus* to the Justices to enter continuances and hear the appeal was obtained, against which cause was shown in Trinity Term.

It was urged that the rule was moved for too late; but an explanation was given, that the delay arose from the necessity of consulting the parish, and afterwards counsel.

Lord Denman, C. J., said—"There is no absolute rule on "the subject; at the same time it is clear that such application "should be made in due time. I doubt whether the present "application has been so made; but my brothers think that "we should hear the case, as there has been no distinct notice "of our practice in this respect. We certainly approve of the "conduct of parish officers who do not rush hastily into litigation; but I think these applications should be made very "speedily after the Sessions, otherwise the situation of the "litigant parties may be altered in the interval.

It was then argued that the statement was insufficient, as not showing that the party resided in the township. On the other hand it was contended that the term *occupy*, as applied to a house, imported *residence*; and that, as the occupation was alleged to be in the respondent parish, it was sufficient.

Patteson, J.—" * * * We have to construe a notice " under an Act of Parliament, and the notice must have legal " certainty. It is said that 'occupation' in this case must " mean 'residence.' I do not think so, or even that the words " 'actual occupation' would have that meaning. A man may " actually occupy a large estate which has no house whatever " upon it. The word 'occupation' does not in itself necessarily " involve residence; and even in the case of houses, a man may " occupy two houses in different parishes; he may reside in one " house himself, and occupy the other by his servants residing " in it, yet he could not be said himself to reside in the parish " where the last-mentioned house is situate. The notice here " does not necessarily import a residence for forty days; and " though our construction may appear strict, the Court has de- " cided that such notices must state such facts as necessarily " import a settlement."

Williams, J.—" Our principle has been to compel both re- " spondents and appellants to give full information to each " other of the case relied upon. In pursuance of this principle " we hold that it is not enough in these instruments, when a " settlement is set up in them, to give the legal result of facts by " stating generally any particular head of settlement, but that " the constituent parts of such settlement must also be specified. " There ought to have been in this case an express allegation of " residence."

Wightman, J.—" It is better that distinct terms should be " used."

Rule discharged.

Q. v. Old Stratford. 2 G. & D. 82: S. C. 11 L. J. R. (n. s.) M. C. 115.

THE statement of the grounds of appeal set up a settlement of the pauper through his father by the latter having rented a

tenement, and occupied the same, at the rent of 10*l.*, in a different parish from that of the appellants. It was objected that the statement was insufficient, as it did not appear that the pauper's father *resided forty days* in the parish. The Sessions overruled the objection, subject to a case.

In support of their order it was argued that it was for the Sessions to determine whether the statement was sufficient, and they had decided the matter accordingly, considering that residence must be inferred from the occupation; that the statement of the grounds of appeal ought not to be construed with the same strictness as the examination, inasmuch as, if the latter be defective, it can be abandoned, and a fresh order obtained, whereas the statement of appeal concludes the appellants for ever. The appellants know nothing of the objections to their statement until the time of the trial, and cannot therefore correct it.

Lord Denman, C. J.—" * * * The Sessions have found
 " the statement of the grounds of appeal sufficient; but how
 " have they found the question? Subject to the opinion of this
 " Court. * * * The grounds of appeal are intended to set
 " up a settlement obtained subsequently to that stated in the
 " examination, but they do not state a complete settlement. I
 " think infinite benefit will be conferred upon parishes by re-
 " quiring the full particulars of a settlement to be given; and
 " I think we ought not to allow the use of words which are con-
 " tended to be equivalent to those which would accurately de-
 " scribe the settlement." Order quashed.

Q v. Stowford. 2 G. & D. 390; S. C. 12 L. J. R. (n. s.) M. C. 7.

THE examination of the pauper, among other things, stated that she " went to Stowford, and lived with Mr. Jackman there, " under a yearly hiring, for eleven months and a fortnight." The statement of the grounds of appeal was, " because the pauper " acquired a settlement in the said parish of Stowford by hiring " with one Mr. Jackman from Lady-day to Lady-day, and ser- " vice under the same in that parish accordingly, subsequently " to that acquired in our parish."

At the trial of the appeal it was objected that the statement of the ground of appeal was insufficient; but the Sessions overruled the objection, and quashed the order.

In support of their judgment it was argued that if the statement were read with the examination it was sufficient. The examination showed the date, yearly hiring, and residence of the pauper; and the statement of the grounds of appeal showed that the service was for a year. Any question as to the sufficient particularity of the documents was concluded by the judgment of the Sessions.

Contrà it was contended that, as the Sessions had granted the case upon this point, they had not decided the question of sufficient particularity. Then, there being no reference in the statement to the examination, it cannot be said that the appellants referred to the same person as was mentioned by the respondents.

Lord Denman, C. J. — “ The first impression of any one
“ reading these documents might very well be, that the Mr.
“ Jackman mentioned in them is one and the same person. But
“ when the grounds of appeal are attentively looked at, it will be
“ seen that there really is no reference in them to the Mr. Jack-
“ man mentioned in the examination; so that there are two per-
“ sons mentioned, and no averment is made of their identity.
“ * * * When the places mentioned are very small, and
“ the names of persons very uncommon, there may be no un-
“ certainty as to the persons meant; yet, on the other hand, the
“ mention of a common name with reference to a populous
“ neighbourhood might give no information whatever, and it
“ would be most inconvenient to lay down a different rule for
“ the two cases. I think *Q. v. North Bovey** an authority
“ binding upon us; and as the Sessions have asked our opinion,
“ we cannot but say that we think there was nothing for them
“ to inquire into, and that their decision was wrong.”

Order of Sessions quashed.

* *Ante*, p. 188.

What in Issue under statement of Grounds of Appeal.

Q. v. Stapleford Fitzpaine. 1 G. & D. 605 : S. C. 11 L. J. R. (n. s.) M. C. 38.

THE examinations on which the pauper was removed showed that her husband's father, J. H., occupied for thirteen years an estate which he had acquired by a parol gift, but of which he had been dispossessed by an ejectment, on his asserting a right to it. He had paid the poor-rates during his occupation, and the overseer stated that, during the time that J. H. occupied the estate, namely, in 1826, he collected the poor-rates of him as the occupier. The grounds of appeal were various, applying to different points in the examination, but it was stated that the said J. H. was not rated, and did not pay rates and taxes for the estate, as stated in the examination; and that the examination was *informal and wholly insufficient in law, and bad on the face of it*.

The Sessions were of opinion that J. H. acquired a settlement by residence on an estate which he claimed as his own, and by being charged to and paying the parochial rates and taxes; but quashed the order, on the ground that the examinations were insufficient to enable the respondents to go into either ground of removal.

In support of their order it was argued that, though the examination was sufficient in reference to the proof of the payment of the rate, it did not show that the party had been rated, of which the proper evidence was the rate-book; that this ought to have been produced, and the overseer, being before the Justices, might have produced it. Then the statement in the grounds of appeal, that the examination was bad on the face of it, enabled the appellants to take the objection.

Against the order it was contended that no objection was taken before the Justices to the insufficiency of the evidence; if it had, the rate-book might have been produced.

Patteson, J., observed—"The examination is sent in order " that the parish removed to may object at that time; at all

“ events, if the objection is then made, and is found to be good,
 “ the respondents can abandon their order.” *

But the objection to the evidence of the rating has not been properly pointed out in the statement of the grounds of appeal. The general objection is not enough, especially when various points of objection are minutely particularized.

The Court took time to deliberate, and

Lord Denman, C. J., afterwards delivered the judgment.

* * * *

“ Before we inquire into the sufficiency of the examinations,
 “ it is necessary to consider the statement of the grounds of
 “ appeal, because the appellants can make no other objections
 “ to any part of the respondents’ case than are stated in such
 “ grounds; and we agree with the respondents’ counsel, that at
 “ least the same degree of strictness is to be used in deciding
 “ upon the sufficiency of such statements as in deciding on that
 “ of the examination. Both are to be treated candidly, and
 “ with a view to advance the objects of the statute in requiring
 “ their mutual delivery. *The examination construed fairly must*
 “ *show that the Justices have primâ facie been justified in making*
 “ *the order; the grounds of appeal construed in the same way*
 “ *must disclose the nature of the objections to the order, or the*
 “ *new matter, as the case may be, which induces the appellants*
 “ *to resist the removal.* By these modes the legislature has
 “ wisely thought that the expense of groundless removals and
 “ fruitless appeals may best be prevented; and it is the duty of
 “ the Court of Quarter Sessions, and of this Court, to take care
 “ that the provisions of the Statute be fairly and fully carried
 “ out.

* * *

“ It may be conceded that the examination does not in any
 “ part state, in express terms, that J. S. was rated; and, as-
 “ suming that the parish rates were not produced or proved
 “ before the removing Justices, two questions might have arisen
 “ —the first, whether the examination is on these accounts defec-
 “ tive; the second, whether, looking at it and the notice of appeal,

* See *ante*, p. 142.

“ the respondents could properly be admitted to prove a rating
“ at the trial. But it appears to us that the statement itself is
“ so framed as to preclude the appellants from insisting upon
“ either of these objections. As to the first, it does not object
“ to the examination any want of proof of rating ; it denies that
“ in fact J. H. was rated, but does not say that the examina-
“ tion contains no evidence of it. It was urged that this
“ objection was open under the general words—*is informal*
“ *and wholly insufficient in law, and bad on the face of it ;*
“ we are quite clear that under these words, if they stood alone,
“ no objection would in this case be open to the appellants, for
“ they would convey no information to the respondents of the
“ grounds of appeal intended to be relied on, and to hold them
“ sufficient would defeat the very object of the Statute. The
“ addition of other particulars, instead of helping the appellants,
“ makes their case worse. Any one reading these general
“ words, followed by specific objections, would conclude that
“ they were intended to introduce and comprise no more than
“ such particulars as were afterwards so specified ; and when,
“ besides this, they are preceded by a denial in terms that
“ J. H. was in fact rated, the respondents would still more
“ certainly be led to conclude that it was not intended to
“ object to want of evidence before the removing Justices, but
“ to rely on the fact itself being otherwise than was asserted.
“ Instead, therefore, of having a defect pointed out to them in
“ the examination, of the existence of which if true they must
“ be aware, and therefore might be led by it at once to abandon
“ the support of their order, they would see themselves chal-
“ lenged only to prove the fact on the trial, and be led to
“ prepare themselves to prove it then. Upon the principles
“ before laid down, therefore, we think the notice defective for
“ this purpose. * * *

“ The second question is decided by the fate of the first.
“ There was clearly nothing to prevent the respondents from
“ proving a rating at the trial but the assumed defect in the
“ examination, as to the want of express statement and strict

“ proof of such rating, for a rating is impliedly stated, and at
 “ all events irregularly proved, by the evidence of the parish
 “ officer, who states that he called on J. H., as the occupier,
 “ for the rates, and he paid them ; but if the appellants are
 “ precluded from insisting on this defect, by the insufficiency
 “ of their notice, it is between these parties as if it never ex-
 “ isted.” * * * Order of Sessions quashed.

Q. v. St. John, Margate. 1 A. & E. (n. s.) 252 : S. C. 4 P. & D. 653.

THE pauper in his examination stated—“ When I was about
 “ fifteen years old I was bound apprentice to J. C., of Playden.
 “ I was bound until I should attain the age of twenty-one
 “ years, and I now produce the indenture, dated the 30th of
 “ August, 1821, executed by both parties and by my father.
 “ The consideration was 15*l.* I served the whole time.”

The appellants in their grounds of appeal stated that the pauper did not gain a settlement by reason of his being bound an apprentice, by indenture dated the 30th of August, 1821, to one J. C., and by serving under the said indenture, because the premium of 15*l.* paid to the said J. C. was a payment made by the parish officers of, &c., and not by the father of the pauper ; and that *the requisitions of the Statute were not complied with.*

The Sessions required the respondents, who produced the indenture of apprenticeship, to prove its execution, which they were unable to do, and accordingly withdrew it, contending that the appellants were bound to prove their objection. The Sessions, however, required the respondents to proceed with their case, and as they did not do so the order was quashed.

In support of their order it was contended that the appellants had not admitted the execution of the indenture, but the objections are announced as to be taken in the event of the indenture being produced. If the execution was admitted, the appellants having denied that the requisites of the Statute had been complied with, the respondents were bound to prove that they had, and the affirmative was on them.

Lord Denman, C. J.—“ * * * This notice of appeal does
 “ not put in issue the execution of the indenture. Where par-
 “ ticular facts are specified and disputed, all other facts
 “ alleged in the examination are admitted. Then the appel-
 “ lants by this notice take on themselves to assert that the 15l.
 “ was not properly paid, and they had to show that. The
 “ notice raises no other point.” Order quashed.

Variance from the Examination.

Q. v. Justices of the West Riding of Yorkshire.

(*In re Clint v. Birstwith.*)

3 P. & D. 462 : S. C. 10 A. & E. 685 : 9 L. J. R. (n. s.) M. C. 57.

THE pauper in his examination stated that in 1827 he took a farm at Clint of about twelve acres, and entered upon it in June, having engaged to pay 40l. a-year rent; that he was not able to pay the whole year's rent, and gave up the possession to the landlord in June, 1828. On the trial of the appeal it was proved that the pauper took the farm in 1828, and not in 1827. The Sessions on objection held this to be a material variance, and quashed the order. A rule *nisi* for a *mandamus* to the Sessions to hear the appeal had been obtained, against which *Ex parte Broseley*, 8 A. & E. 423, S. C. 2 N. & P. 355,* was cited.

In support of the rule it was argued that the examination ought to be considered differently from the notice of appeal, inasmuch as the examination is taken by the Justices, and the statement of the pauper is put down, whereas the notice of appeal is framed by the parties. The variance, however, in the present case was not material, nor calculated to mislead the respondents. Then, as the Sessions have decided the case without hearing the merits on a preliminary objection which cannot be sustained, the Court will issue the writ of *mandamus*.

Lord Denman, C. J.—“ Where the Sessions had decided
 “ wrong on some preliminary point of practice we should, no
 “ doubt, interfere with their decision, and issue the writ. This

* See vol. i. of this Abridgment, p. 188.

“ case certainly shows that very often it may be a matter of
“ great difficulty to say whether a variance is material or not.
“ A variance may occur which is so trifling as to amount to a
“ mere clerical error, or it may be such a variance as to set up
“ an entirely different question ; and though apparently trifling,
“ such, for instance, as the mistake of a year, or even of a
“ name, yet, where the parish is very populous, in effect be
“ quite sufficient to mislead the opposite party. This being
“ so, it must be a matter of discretion, in all cases, for the Ses-
“ sions to say whether the variance is material or not ; and as
“ they have done so here, I do not see how this Court can
“ interfere ; and, as we have not sufficient materials before us,
“ it is very undesirable that we should interfere.”

Rule discharged.

Judgment of the Court—when given.

Q. v. Oundle. 2 G. & D. 77 : S. C. 11 L. J. R. (n. s.) M. C. 79.

AN appeal against an order of removal was entered for hearing at the Epiphany Sessions in 1841. The appellants had given their notice of appeal in due time, but not their statement of the grounds of appeal. The Court refused to hear or to respite the order, subject to a case to be stated on the point. Subsequently at the same Sessions another order was made on the application of the appellants, entering and respiting a fresh appeal against the same order to the next Sessions, which came on accordingly to be tried at the April Sessions, no case having been tendered to the respondents. The Sessions, on proof of these facts, considered that the order had been absolutely confirmed by the previous Sessions, and dismissed the appeal subject to a case.

Against the order of the Sessions it was contended that the first order, being confirmed subject to a case, was no order at all, and could not conclude the Sessions ; and that the proceeding as to the second entry was the act of the Sessions, and cannot be taken to have been *ex parte*, inasmuch as they have full power to review their own decisions.

Lord Denman, C. J., after stating the facts relative to the first case,—“ Another step was taken which we cannot avoid
 “ seeing was taken *ex parte* : the appellants enter and respite a
 “ new appeal, going, probably, through the form of putting in
 “ a paper. It is impossible not to see that this was intended
 “ by them as a substitute for their old appeal, and done with-
 “ out consulting the other party : that they had no right to do.
 “ Then the next Sessions finds an appeal entered against an
 “ order which had been already placed in a different train for
 “ disposal. The Court puts its own construction on what has
 “ taken place, and considers the last Sessions as having already
 “ dismissed the appeal, subject to considerations of which the
 “ appellants had not chosen to avail themselves. The order
 “ stands, therefore, as originally confirmed.”

Patteson, J.—“ The Statute 9 Geo. I. c. 7, § 8, on which
 “ the practice of entering and adjourning appeals, where no
 “ sufficient notice has been given, rests, appears not to apply
 “ to cases where notice has been given, but grounds of appeal
 “ have not been served. The appeal, therefore, was dismissed,
 “ subject to a case : that, it was contended, was no confirma-
 “ tion of the order until the case was heard. That may be ;
 “ but the proceeding to enter the appeal a second time, pend-
 “ ing the case, was not the less irregular. Then the next Ses-
 “ sions, finding that it was the same order which was thus
 “ twice appealed against, refused to recognise the second entry,
 “ and were quite justified in doing so.”

Williams, J., agreed.

Order of Sessions confirmed.

Conduct of the Court—Acts of Justices when interested.

Q. v. the Commissioners for Paving Cheltenham.

1 G. & D. 167 : S. C. 1 A. & E. (n. s.) 467 : 10 L. J. R. (n. s.) M. C. 99.*

AN appeal against a rate made under a local Act for paving the town of Cheltenham was heard at the Gloucestershire

* Though this is not strictly a Poor-Law case, the decision applies strongly to the trial of appeals in Poor-Law questions. It is right, however, to refer to the 5 & 6 Vict. c. 57, § 15 *postea*, as to the power of ex-officio guardians acting at the Sessions.

Sessions, on two days, and quashed. It appeared that several magistrates who were interested in the subject-matter of the appeal took part in the decision of the Court, and voted with the majority for quashing the rate. The order of Sessions having been brought up on a *certiorari*, a rule had been obtained that it should be quashed on this ground, against which cause was shown.

Lord Denman, C. J.—“ * * * In this case it is clear that
“ the course taken by the Sessions on the second day cannot
“ be supported. On that day three Justices took an active
“ part who were interested in the question before them. That
“ is a sufficient reason for saying that no order emanating
“ from a Court of which they were members can stand. I
“ find they took part in the proceedings; that is enough; I will
“ not inquire what part. * * * In deciding this case I do not
“ mean to say there may not be cases where a magistrate who
“ is interested may be present without vitiating the proceedings.
“ If his interest were very slight, and at the same time notori-
“ ous, and not objected to, or, at all events, if anything took
“ place which could be construed into consent, it would be
“ monstrous to say that his presence would vitiate all the pro-
“ ceedings. Great inconvenience, especially in Borough Ses-
“ sions, might arise from our laying down such a rule. It
“ would perhaps be well if an interested magistrate were always
“ to declare the ground of objection to which he might be ob-
“ noxious on the score of interest, and then the parties might
“ waive their objection. Here there is no pretence for suppos-
“ ing that the respondents consented that the interested magis-
“ trates should take part. * * * ”

Patteson, J.—“ * * * I entirely agree with my Lord that
“ what took place on the second day is quite enough to vitiate the
“ proceedings on that day; three out of the eleven magistrates
“ on one side were interested, and if these three were struck off
“ it would destroy the majority. At the same time I am not
“ prepared to say that, if one interested magistrate had voted
“ with fifty others who were not interested, it would vitiate the

“ proceedings. It may be so, but it is not necessary to lay
 “ that down ; and I can conceive that great injustice might be
 “ done by laying that down, for a magistrate interested on the
 “ ground of his being a member of some joint-stock company
 “ might never once think of that circumstance, and then the
 “ party who failed might fish out the objection, to the defeat of
 “ justice. In this very case the three magistrates who voted
 “ on the second day might never have thought of their con-
 “ nection with the different companies as giving them any
 “ interest. * * *

Williams, J.—“ * * * I agree that, if interested magistrates
 “ are present, and the contending parties look on so as in any
 “ way to imply a desire that the Court so constituted should
 “ proceed, the proceedings of the Court should not be disturbed.
 “ But * * * I entertain a strong impression that, speaking
 “ generally, the circumstance of a Court being improperly con-
 “ stituted would vitiate its proceedings.”

Order of Sessions quashed.

R. v. Rishton. 1 A. & E. (n. s.) 479 : 10 L. J. R. (n. s.) M. C. (n.) 103.

Two Justices of Lancashire made an order of removal, one of whom was interested. Upon appeal against the order four magistrates were present, two of whom were interested, and two were not. Of the latter two one dissents from confirming the order, and the other is silent. The order was confirmed. The Court of Queen's Bench, in Trinity Term 1813, sent back the order of removal, that the appeal might be reheard.

Costs of Appeal—when to be awarded.

Q. v. Long. 1 G. & D. 367 : *S. C.* 1 A. & E. (n. s.) 740 : 10 L. J. R. (n. s.)
 M. C. 124.

AN appeal by the parish of St. James, Westminster, against an order of removal had been tried at the Portsmouth Borough Sessions, held on the 26th and 27th December, 1839, and confirmed, and the Court ordered that the appellants should pay the respondents their costs. Their counsel applied to the

Recorder to name a sum ; but he stated that the practice was to leave the amount to be settled by the officer of the Court. The business being over, the Court adjourned ; after which the Clerk of the Peace settled the amount of the costs at 43*l.* 1*s.* 8*d.*, submitted the same to the Recorder, who signified his approval thereof, and the Clerk of the Peace gave a certificate of the amount. Afterwards an order was made out, and dated on December 26th, for this sum, which was served in January 1840. The money not being paid, application was made to the defendant, a police magistrate in Middlesex, for a distress warrant to enforce it, which he refused to grant.

A rule *nisi* for a *mandamus* had been obtained, in support whereof it was urged that, though a Court of Quarter Sessions must during its sitting fix the amount of the costs, by adopting the taxation of their office, the rule was different in the case of a Recorder, who is a continuing judge. The Recorder had in this case adopted the taxation. The 4 & 5 Will. IV. c. 76, § 82, did not, as the 8 & 9 Will. III. c. 30 § 3, require that the award of costs shall be at “ the same Sessions.”

Lord Denman, C. J.—“ * * * We have this day given judgment in *Sellwood v. Mount*, 1 G. & D. 358, that the award of costs must be the act of the Court of Quarter Sessions, though they may receive advice upon which they may act. The Recorder must exercise his judgment while sitting in that capacity, and it is clear in this case that the Sessions were at an end before he signified his adoption of the taxation of the costs by the Clerk of the Peace.”

Patteson, J.—“ The Quarter Sessions have no authority to award a specific sum for costs, except during the continuance of the same Session at which the case was tried and the costs ordered generally.”

Coleridge, J.—“ It cannot be contended that such an order could be made at a subsequent Sessions.”

Rule discharged with costs.

Practice at the Sessions as to Restatement of a Case.

Q. v. Barnes. 2 G. & D. 233 : S. C. 11 L. J. R. (n. s.) M. C. 128.

WHERE an order of Justices has been quashed on appeal subject to a case, and the Court of Queen's Bench directs the case to be restated, the Sessions have no jurisdiction to hear evidence thereon, or to confirm or quash the order, without a notice by one of the parties to the other of an intention to proceed at such Sessions, which notice may in such a case be given by the respondents. Service of a copy of the rule of the Court upon the other party will not dispense with the service of a notice.

PRACTICE IN THE COURT OF QUEEN'S BENCH.

Mode of granting a Case, insufficient.

Q. v. Wistow. 1 G. & D. 681 : S. C. 10 L. J. R. (n. s.) M. C. 112.

AN order of removal was confirmed subject to a case, which stated for the opinion of the Court a question as to whether the grounds of appeal had been served in time, and concluded thus :—

‘ If the Court shall be of opinion that the said service of the statement of the grounds of appeal was bad and insufficient, then the aforesaid order shall stand confirmed ; but if the Court shall be of a contrary opinion, then the appeal *to stand respited* until the General Quarter Sessions next after the judgment of the Court.’

Lord Denman, C. J., said “ that the Court could not hear “ a case so stated. The Sessions asked this Court to decide “ the case, and appeared also to reserve to themselves the right “ of coming to a decision of their own upon it afterwards.”

Rule for quashing the order discharged.

Granting of a Case not compellable.

Ex parte Jarvin. 9 D. P. C. 120.

ON an appeal against an order of removal before the Recorder of Liverpool the respondents proved that the pauper had gone to his place the day before New Year's day, and left it the day

after Christmas, in pursuance of the contract of hiring. Though the appellants objected that this did not prove the settlement, the Sessions confirmed the order, and refused to grant a case.

A motion was made for a *mandamus* to the Recorder to grant a case, and the expression of Lord Tenterden in *R. v. The Justices of Pembrokehire*, 2 B. & Adolph. 393, upon the case of *R. v. The Earl of Effingham and others*, there cited, was relied on; but

Patteson, J., said “ that the cases showed that a *mandamus* “ would lie to the Sessions, to *state* a case, but not to *grant* “ one, as that was a matter purely for their discretion.”

Rule refused.

Notice for Certiorari.

Q. v. How and others, Justices of Shrewsbury and Salop.

4 P. & D. 320 : *S. C.* 11 A. & E. 159 : 9 D. P. C. 501 : 10 L. J. R. (n. s.) M.C. 8.

A RULE had been obtained for a *certiorari*, to bring up an order of appointment of overseers made for the Parish of St. Julian, in Shrewsbury, by two Justices of the city and two of the county.

The notice of the intended application was signed by E. Leake, *assistant-overseer*, but it did not in any other manne state at whose suit the writ was to be moved for. The affidavit of the service of the notice upon the several parties did not state that they were the Justices present when the order was made, but a copy of the order was set forth, and purported to have been made by them. The rule had been enlarged by consent.

It was objected against the rule that the notice was defective in not stating the name of the party by whom the application was to be made, and also that it did not appear that the notice had been served on the Justices who made the order at Sessions.

Contrà, it was contended that the party who had signed the notice had stated that he was *assistant-overseer*, and, therefore,

it sufficiently appeared that he was to sue out the writ. Then the notice was served upon magistrates having the same names as those who made the order; and it is not shown that they were different persons. But, as the magistrates have appeared, and obtained an enlargement of the rule, they are now precluded from taking any objection to the form or sufficiency of the notice.

Lord Denman, C. J.—"The Act 13 Geo. II. c. 13, distinctly requires that the party suing out the writ should also, in the manner prescribed in § 5, give notice to the magistrates of his intention. From the notice in question it does not fully appear that the overseer was the party who intended to apply for the *certiorari*, nor that the magistrates who made the order at Sessions were properly served with the notice. It is no answer to this objection to say that the rule was enlarged, and that the Statute was satisfied by the magistrates appearing to show cause against the rule."

Coleridge, J.—"A party against whom the application is made is to be put in the position of being able to show cause in the first instance. He must, therefore, distinctly know by the notice itself who is the party making the application, that he may be able to come prepared with evidence for example, that he is not entitled to make it.

Rule discharged.

Q. v. Justices of Wiltshire.

(*In re Spackman.*)

10 L. J. R. (n. s.) M. C. 25: S. C. 4 D. P. C. 524.

A NOTICE, signed by the attorney for the respondents, who were all named therein, of an intended application for a *certiorari* to bring up the judgment of the Court of Quarter Sessions on an appeal against the accounts of the respondents, late churchwardens and overseers of the parish of Bradford, was served upon three of the Justices of the county, who, according to the affidavits, were present at the trial and hearing of the appeal.

It was objected, against a motion for the issuing of the *cer-*

tiorari, that it did not appear that the notice had been served on the Justices by and before whom the proceedings were had, according to the 13 Geo. II. c. 18, § 5. The expression used is not equivalent, as it is not shown that they took any part.

Lord Denman, C. J.—"How could that be shown? The Justices at Quarter Sessions merely sit with their chairman, and the chairman reports the decision of the bench. Their presence is the only evidence of their taking part."

Secondly, that the notice, being given by an attorney, is not given by the party suing forth the *certiorari*.

Lord Denman, C. J.—"He says he is attorney for the respondents, and they are all named."

Rule absolute.

Q. v. Solly. 9 D. P. C. 115.

A NOTICE for a *certiorari* to the Justices of Leicestershire to bring up an order of Sessions was given by a party who signed it as *the solicitor of the churchwardens and overseers* of the parish of Market Harborough. The *certiorari* issued, and a rule had been obtained to quash it, on the ground that the notice was insufficient within the 13 Geo. II. c. 18, § 5. Three objections were made: first, that the notice should have contained the names of the parties applying for the *certiorari*; secondly, that the parties so applying should have signed the notice themselves; and, thirdly, that, in point of fact, the solicitor was not authorised by all the parish officers.

The rule having been argued,

Patteson, J., said, "The case of Q. v. The Justices of Lancashire, 3 P. & D. 86, is an authority to show that the signature by the solicitor is sufficient. Then I think that the description of the parties as overseers, without mentioning their names, they filling an official situation, was sufficient. * * * And I think that on these affidavits there can be no doubt that an authority was given."

Rule discharged with costs.

What to be brought up on the Issue of the Certiorari.

Q. v. The Justices of the West Riding of Yorkshire.

(In re Tollerton v. Idle.)

12 L. J. R. (n. s.) M. C. 15.

THE statement of the grounds of appeal alleged an objection to the examination, which the Sessions at the trial overruled, refusing to grant a case on the point. They ultimately confirmed the order, subject to a case, on a point of evidence arising at the trial.

A writ of *certiorari* was moved for to the Sessions to return the order of Sessions, together with the order of removal, the examinations, and the notice and statement of the grounds of appeal.

The Court took time to consider; and

Lord Denman, C. J., afterwards delivered the judgment of the Court. "One question has now come before us, whether
 "the writ of *certiorari* ought to require more to be returned
 "than the record of the Court of Quarter Sessions, thereby
 "meaning the original order of removal, and the proceedings
 "of the Sessions thereon upon the hearing. The application
 "is to require the return of that record, and also of the examination whereon the original order of removal was made. In
 "the first place, we find, upon reference to the officer, that there
 "is no memorial nor any note to be found of any *certiorari*
 "having issued except where a case has been granted by the
 "Sessions requiring a return of any such additional matter. * * *
 "We consider this as a mere speculative novelty, without the
 "warrant of any principle, precedent, or authority, and that,
 "therefore, there must be no rule."

Rule refused.

When Mandamus to the Sessions will lie.

Q. v. Justices of the West Riding of Yorkshire.

(In re Chorlton Township.)

11 L. J. R. (n. s.) M. C. 86.

THE Justices at their Sessions held that a notice of appeal against a suspended order of removal was too late, and dis-

missed the appeal, but offered to grant a case upon the point. This was declined, and the appellants had obtained a rule *nisi* for a *mandamus* to the Sessions to hear the appeal.

Against which it was urged that, as the appellants had refused the remedy offered them, they had no right to apply for a *mandamus*. If a case had been granted no *mandamus* could have been obtained.

The Court, however, held that when the Sessions volunteered a case the parties were not bound to accept it, and abandon the right to apply for another remedy.

The rule for the *mandamus* was made absolute.

EVIDENCE.

Witnesses competent under 3 & 4 Vict. c. 26.

Q. v. Inhabitants of Doddington. 1 A. & E. (n. s.) 412.

ON an indictment for the non-repair of a highway, the defendants, to negative the fact of the place being a public highway, called as witnesses persons who were owners in fee of land in the parish, but were not occupiers nor rated inhabitants. The Judge admitted them under the 3 & 4 Vict. c. 26, § 1, and the defendants obtained a verdict.

The Court, on a motion for a new trial, held that these witnesses were properly admitted. That the term *inhabitants* in that Statute ought to receive the largest construction, and must be extended to *owners*, as it would be absurd to hold that those immediately liable were rendered competent, but not those only remotely interested.

Rule refused.

Proof of Non-Access.

Q. v. Mansfield. 1 A. & E. (n. s.) 444; S. C. 1 G. & D. 7; 10 L. J. R. (n. s.) M. C. 97.

ANN Fletcher and her two children were removed from Mansfield to Tewkesbury. She was married to T. Fletcher in 1812, who was alive at the date of the order, and whose settle-

ment was in Tewkesbury. She was married to one Parsons, at Mansfield, in 1818, and cohabited with him until 1832, during which time her two children, who had passed by the name of Parsons, were born. The Sessions confirmed the order as to Ann Fletcher, but quashed it as to the children.

In support of their order it was argued that the Sessions were justified in coming to the conclusion that the children were illegitimate. Here there was nothing to indicate access, or any opportunity of access, on the part of the husband; whereas the mother of the children was living in open adultery.

Lord Denman, C. J.—"The question is, whether there was
 "any evidence of illegitimacy? to make out which there
 "must be evidence of non-access. Non-access may, no doubt,
 "be inferred from circumstances; but here the only fact proved
 "was that the mother lived with a man in a state of adultery.
 "We are not told where the husband was during the period of
 "her adulterous intercourse. * * * The fact of non-access is
 "not to be assumed. * * *"

Patteson, J.—" * * * We are asked from these facts to
 "say there was non-access, though her husband might be
 "living next door to her."

Order of Sessions quashed.

Effect of former Order quashed between same Parties.

Q. v. Clint. 11 A. & E. 624 (n.): S. C. 1 G. & D. 245; 10 L. J. R. (n. s.)
 M. C. 151.

A PAUPER was removed in June, 1840, to the township of Clint, and the examination set out a settlement by a renting of a tenement entered into in June 1827. There was an appeal, and this date was denied in the grounds of appeal. At the Sessions it was proved that the tenement was not rented until June 1828. The Sessions held the variance material, and quashed the order; and the Court of Queen's Bench refused to issue a *mandamus* to the Justices to hear the appeal.* A second order of removal was obtained on an examination which

* See *ante*, page 198.

set out the correct dates. To this there was an appeal, denying the renting of the tenement thus stated, and also alleging the quashing of the former order. The Sessions confirmed the second order.

In support of the order of Sessions it was argued that there had never been a decision upon the merits of this settlement. The settlement alleged in the second order had never been determined, as the Sessions excluded the evidence on the first appeal, and the settlement therein alleged is not the same as that which was decided before. Again, the first order was quashed, not on the merits, but on a point of form. The error in the first examination was a formal objection to the discussion of the merits. The case is like that of an informal notice of appeal.

Coleridge, J., observed,—“ Suppose the appellants had “ tried to set up a subsequent settlement ; they would have “ been prevented from doing so if it was not stated in their “ notice of grounds. Would not that have been a decision on “ the merits ? ”

Lord Denman, C. J.—“ * * * The removing parish must be “ cautious in sending notice of the settlement which is to be “ relied on ; and the appellants have a right to bind the “ respondents to that settlement. It is said that this is hard “ and unjust, but I think there would be more hardship in “ allowing experimental removals on imperfect statements, “ which might leave one party free to prove any case, and “ wholly mislead the other.”

Order of Sessions quashed.

STATUTES.

STATUTES RELATING TO THE POOR LAW COMMISSION.

5 Vict. c. 10.

An Act to continue the Poor Law Commission until the 31st day of July, 1842. [7th October, 1841.]

Whereas by an Act passed in the fifth year of the reign of his late Majesty, intituled *An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales*, provisions were made for the appointment of Poor Law Commissioners, assistant commissioners, secretaries, and other officers, and for their continuance in office until the end of the session of Parliament held next after the fourteenth day of *August* one thousand eight hundred and thirty-nine; and by another Act passed in the third year of the reign of her present Majesty provision was made for their further continuance in office until the fourteenth day of *August* one thousand eight hundred and forty, and thenceforth until the end of the next session of Parliament; and by another Act passed in the fourth year of the reign of her present Majesty provision was made for their further continuance in office until the thirty-first day of *December* one thousand eight hundred and forty-one; and it is expedient further to continue such provisions: Be it therefore enacted, That every Poor Law Commissioner appointed by his late Majesty, or appointed or to be appointed by her Majesty the Queen, her heirs and successors, and every assistant commissioner, secretary, and other officer and person duly appointed by the Poor Law Commissioners, shall be empowered (unless he shall previously resign or be removed) to hold his office, and exercise the powers thereof, until the thirty-first day of *July* one thousand eight hundred and forty-two; and until the expiration of the said period it shall be lawful for her Majesty, her heirs and successors, from time to time, at pleasure, to remove any of the said Commissioners for the time being, and upon every or any vacancy in the number of Commissioners, either by removal, or by death or otherwise, to appoint, by warrant under the royal sign manual, some other fit person to the said office, and until such appointment it shall be lawful for the surviving or continuing Commissioner or Commissioners to act as if no such vacancy had occurred.

Poor Law Commissioners, &c., further continued in office till 31st July, 1842.

5 & 6 Vict. c. 57.

An Act to continue until the 31st day of July, 1847, and to the end of the then next Session of Parliament, the Poor Law Commission; and for the further Amendment of the Laws relating to the Poor in England. [30th July, 1842.]

Whereas by an Act passed in the fifth year of the reign of his 4 & 5 W. 4, late Majesty King *William IV.*, intituled *An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales*, provision was made for the appointment of Poor Law Commissioners, assistant commissioners, secretaries, and other officers, and for their continuance in office until the end of the session of Parliament held next after the fourteenth day of *August* in the year one thousand eight hundred and thirty-nine, and by other Acts passed respectively in the third and the fourth 2 & 3 Vict. c. 83. and the fifth years of the reign of her present Majesty provision 3 & 4 Vict. c. 42. was made for their further continuance in office until the thirty-first day of *July* in the year one thousand eight hundred and forty-two, and it is expedient to extend such provisions: Be it therefore 5 Vict. c. 10. enacted, That every Poor Law Commissioner appointed by his late Majesty, or appointed or to be appointed by her Majesty the Queen, her heirs and successors, and every assistant commissioner, secretary, and other officer and person duly appointed by the Poor Law Commissioners, shall be empowered (unless he shall previously resign or be removed) to hold his office, and exercise the powers thereof, until the thirty-first day of *July* in the year one thousand eight hundred and forty-seven, and thenceforth until the end of the then next session of Parliament; and until the expiration of the said period it shall be lawful for her Majesty, her heirs and successors, from time to time, at pleasure, to remove any of the said Commissioners for the time being, and upon every or any vacancy in the number of Commissioners, either by removal or by death or otherwise, to appoint by warrant under the royal sign manual some other fit person to the said office, and until such appointment it shall be lawful for the surviving or continuing Commissioner or Commissioners to act as if no such vacancy had occurred. Poor Law Commissioners, &c., continued.

Section 2. And whereas by the said first-recited Act it is provided, that it shall not be lawful for the Poor Law Commissioners to appoint more than nine assistant commissioners to act at any one time, unless the Lord High Treasurer, or the Commissioners of her Majesty's Treasury, for the time being, or any three or more of them, shall consent to the appointment of a greater number: Be it enacted and provided, That after the thirty-first day of *December* in the year one thousand eight hundred and forty-two it shall not be lawful in any case for the Poor Law Commissioners to appoint or continue in office more than nine assistant commissioners to act in *England and Wales*: Provided always, that after the passing of this Act, whenever it may seem fitting to the said Commissioners, or whenever they may be thereunto required by her Majesty's principal Secretary of State for the Home Department, the Not more than Nine Assistant Commissioners to act in England. Professional persons, not being Assistant

said Commissioners, with the consent of the Lord High Treasurer or the Commissioners of her Majesty's Treasury for the time being, or any three of them, shall appoint some person, being a doctor in medicine, a barrister at law, a member of the Royal College of Surgeons of *London* or *Dublin*, an architect or surveyor, and not being one of the assistant commissioners as aforesaid, or some two or more of such persons, to act either in *England* or *Ireland* as an assistant commissioner or assistant commissioners, for the purpose of conducting any special inquiry, for a period not exceeding thirty days; and the said Commissioners shall delegate to every person so appointed for the purpose of conducting such inquiry all such of the powers of the said Commissioners as they may deem necessary or expedient, for summoning witnesses and conducting such inquiry; and every such appointment shall be subject to the approval of one of her Majesty's principal Secretaries of State; and every person so appointed as aforesaid to conduct any special inquiry shall, before he enters on the execution of his duties, take the following oath before one of the Judges of her Majesty's Court of Queen's Bench or Common Pleas, or one of the Barons of the Exchequer in *England* or *Ireland*, as the case may be:

Commissioners, may be appointed to make special inquiries.

Such persons previously to acting to take the following oath.

' I, A. B., do swear, That I will faithfully and honestly, according to the best of my skill and judgment, inquire into all matters and things which I may be lawfully directed to examine into, and will truly and impartially report thereon.'

And it shall not be necessary to notify the appointment of any such person, or the taking of the oath aforesaid, otherwise than by publishing a notification of the same in the *London Gazette*, and by signifying the same, under the seal of the said Commissioners, to the clerk of the peace of the county or counties within which the inquiry in question is to be made: provided always, that if any person be charged with any misconduct in any matter relating to the administration of the laws for the relief of the poor, and if any such special inquiry as aforesaid be directed to be made into such charge, the person bringing such charge shall be entitled to make the same at such inquiry by his counsel or attorney, and the person charged with such misconduct shall be entitled to make his defence at such inquiry by his counsel or attorney; but nothing herein contained shall release any person charged with any misconduct, or bringing any charge of misconduct, from the liability to be himself examined at any such inquiry in respect of the matter of such charge, in the same manner and subject to the same penalties as under the said firstly-recited Act.

In special inquiries on charges of misconduct the persons may be heard by counsel.

Section 3. And be it enacted, That whenever any general rule of the said Commissioners shall be in force, it shall not be lawful for the said Commissioners to issue any particular rule, order, or regulation, addressed to any single parish or union, by which such general rule or any part thereof would be rescinded or suspended, unless one of Her Majesty's principal Secretaries of State have

General rules not to be altered by particular rules, without the consent of

Secretary of State. first signified to the said Commissioners his approval of such particular rule in writing.

Time of operation of certain rules and orders in cases of urgency. Section 4. And be it enacted, That every order of the said Commissioners suspending or dismissing any paid officer from the exercise of his office, in which the said Commissioners shall declare that the urgency of the case requires that such order should take effect within the period of fourteen days, shall come into force at such time as the said Commissioners shall in such order direct, notwithstanding that fourteen days shall not have expired since a written or printed copy of the same shall have been sent by the said Commissioners, as required by the first-recited Act.

Guardians, &c., may set occasional poor to work. Penalty for not doing work. 5 G. 4, c. 83, s. 3. Section 5. And be it enacted, That it shall be lawful for the Guardians of any parish or union, subject always to the powers of the Poor Law Commissioners, to prescribe a task of work to be done by any person relieved in any workhouse, in return for the food and lodging afforded to such person; but it shall not be lawful to detain any person against his will for the performance of such task of work for any time exceeding four hours from the hour of breakfast in the morning succeeding the admission of such person into the workhouse; and if any such person, while in such workhouse, refuse or neglect to perform such task of work suited to his age, strength, and capacity, or wilfully destroy or injure his own clothes, or damage any of the property of the Board of Guardians, he shall be deemed an idle and disorderly person within the meaning of an Act passed in the fifth year of the reign of King *George IV.*, intituled *An Act for the Punishment of idle and disorderly Persons, and Rogues and Vagabonds, in that Part of Great Britain called England.*

Guardians to have the like powers as Overseers with regard to lunatics. 9 G. 4, c. 40. Section 6. And be it enacted, That every Board of Guardians appointed under the provisions of the said first-recited Act, or acting under the Regulations of the said Commissioners for the relief of the poor, and the relieving officers of such Guardians, shall have the like powers as overseers have with respect to insane persons under the provisions of an Act passed in the ninth year of the reign of King *George IV.*, intituled *An Act to amend the Laws for the Erection and Regulation of County Lunatic Asylums, and more effectually to provide for the Care and Maintenance of Pauper and Criminal Lunatics in England*, or of any Act or Acts passed to amend the same; and every such Board of Guardians shall from time to time pay or cause to be duly paid to the treasurer, managers, or keepers of any county lunatic asylum, public hospital, or licensed house respectively, all costs lawfully due in respect of any poor person maintained in such county lunatic asylum, public hospital, or licensed house, and if such costs shall not be duly paid by such Board of Guardians or overseers of the parish to which such poor person may have been chargeable according to the provisions of the said recited Acts, then and in such case it shall be lawful for any two Justices to proceed to the recovery of the said costs, by making and enforcing an order for the same on the overseers of the aforesaid parish, according to the provisions

of the said recited Acts; and it shall be lawful for any such Board of Guardians to contract with any person duly licensed to practise as a medical man to certify as to the state and condition of insane persons under the provisions of the last-recited Act; and whenever any insane person is relieved by any such Board of Guardians or any of their officers, the relieving officer within whose district the parish is situate to which such person may be chargeable, or in which such person may be found destitute, shall give the like information to some justice of the peace acting for the division of the county within which such parish is situated as is required by the said Act of the reign of King *George IV.* of overseers, and subject to the like penalties for neglect; and the clerk to every such Board of Guardians shall on the fifteenth day of *August* in every year, or as soon after as may be, make out and sign two true and faithful lists of all insane persons chargeable to the parish or union in the form in the schedule hereunto annexed, and shall on or before the first day of *September* next succeeding transmit one copy of such list to the clerk of the peace acting in and for the county within which the parish to which each such insane person is chargeable is situated, or to his deputy, to be by him laid before the justices acting for such county at their next general Quarter Sessions, and the other copy of such list to the said Commissioners; and from and after the passing of this Act the overseers of any such parish, or of any parish within any such union, shall not be required to make the annual return required of them by the said Act of the reign of King *George IV.*

Section 7. And be it enacted, That whenever the whole of any parish or parishes is situated at a greater distance than four miles from the place of meeting of the Board of Guardians of the union of which such parish or parishes may form part, it shall be lawful for the Commissioners, on the application of the Board of Guardians, to form such parish or parishes into a district, and to direct the said Guardians from time to time to appoint a committee of their members to receive applications of poor persons requiring relief in such district, to examine into the cases of such poor persons, and to report to the said Guardians thereon.

Where parish more than four miles from place of meeting of Guardians it may be formed into a district for purposes of relief.

Section 8. And be it enacted, That in case any question shall arise as to the right of any person to act as an elective Guardian, it shall be lawful for the Commissioners, if they shall see fit, to inquire into the circumstances of the case, and to issue such order or orders therein, under their hands and seal, as they may deem requisite for determining the question; and no such order shall be liable to be removed by writ of *certiorari* into the Court of Queen's Bench unless the application for such writ shall be made during the term next after the issuing of such order.

Determination of disputes as to the election, &c. of Guardians.

Section 9. And be it enacted, That if any person put in nomination for the office of Guardian tender to the officer conducting the election of Guardians his refusal in writing to serve such office, the election of Guardians, so far as regards such person, shall be no further proceeded with.

Resignation of candidates.

Continu-
ance of
Guardians
in office.

Section 10. And be it enacted, That in every case in which no person shall be elected for the office of Guardian in any parish at any annual election of Guardians, the persons elected for the previous year may continue to act as Guardians until the next annual election.

Commis-
sioners may
accept re-
signation of
any Guar-
dian, and
may order
new elec-
tion.

Section 11. And be it declared and enacted, That the said Commissioners may accept the resignation of any person elected as a Guardian, tendered for any cause which the Commissioners may deem reasonable; and in every case of omission to elect, or of vacancy in any Board of Guardians, by death, resignation, or disqualification, the said Commissioners shall be and shall be deemed to have been empowered to order a new election for the completion of such Board.

In case of
vacancy,
remaining
Guardians
to act.

Section 12. And be it declared and enacted, That in case the full number of Guardians shall not be or shall not have been elected at any election of Guardians, or in case of any vacancy in any Board of Guardians by the death, removal, resignation, refusal, or disqualification to act of any elected Guardian, the other or remaining members of the said Board, being not less than three, shall be and be deemed to have been competent to act until the next election, or until the completion of the said Board, as if the number of such Board were complete, and that no acts or proceedings shall be liable to be questioned on account of any failure to elect any Guardian or Guardians, or on account of any vacancy as aforesaid.

De facto
Guardians.

Section 13. And be it declared and enacted, That no defect in the qualification or election of any person acting as a Guardian at a Board of Guardians, the majority of persons assembled at which shall be entitled to act as Guardians, shall be deemed to vitiate or make void any proceedings of such Board in which he may have taken part.

Paid offi-
cers and
others inca-
pable of
serving as
Guardians.

Section 14. And be it enacted, That no person, during the time for which he may serve or hold the office of assistant overseer of any parish, nor any paid officer engaged in the administration of the laws for relief of the poor, nor any person who, having been a paid officer, shall have been dismissed within five years previously from such office, under the provisions of the said first-recited Act, shall be capable of serving as a Guardian; and no person receiving any fixed salary or emolument from the poor-rates in any parish or union shall be capable of serving as a Guardian in such parish or union.

Ex-officio
guardians
not incom-
petent to
act as
Justices.

Section 15. And whereas doubts have been entertained whether justices of the peace who are *ex officio* members of Boards of Guardians of parishes or unions under the provisions of the first-recited Act can lawfully act as justices of the peace in cases in which the Guardians of such parishes or unions are complainants, or are otherwise interested or concerned, and it is expedient that such doubts should be removed: Be it therefore enacted, That no justice of the peace shall be disabled from acting as such justice at any

Petty or Special or General or Quarter Sessions in any matter merely on the ground that such justice of the peace is an *ex officio* member of any Board of Guardians complaining, interested, or concerned in such matter, or has acted as such at any meeting of such Board of Guardians.

Section 16. And be it enacted, That it shall be lawful for every Board of Guardians constituted under the said first-recited Act to accept, take, and hold, on behalf of the union or parish respectively for which they may act, any lands, buildings, goods, effects, or other property as a corporation, and in all cases to sue and be sued in their corporate name.

Corporate powers of Guardians and district boards.

Section 17. And be it enacted, That wherever a Board of Guardians is empowered to make any order, or to prefer any complaint, claim, or application, before justices or otherwise, if any such Board resolve to make such order, or to prefer such complaint, claim, or application, a copy of the minute of such resolution, signed by the presiding chairman of such Board, and sealed with their seal, and countersigned by their clerk or person acting as their clerk, shall be deemed and taken to be sufficient proof of the making of such order, or of the preferring of such complaint, claim, application, or otherwise, as the case may be; and that whenever, either for the purpose of making an order for the removal of a pauper, or on the trial of an appeal against such order, or for any other purpose, it shall be necessary to prove to what parish a pauper has become chargeable, (if in such parish the laws for the relief of the poor shall be administered by a Board of Guardians or a District Board,) a certificate of such pauper having so become chargeable, signed, sealed, and countersigned as aforesaid, shall be sufficient proof to what parish and at what time such pauper became and was chargeable, unless the contrary shall be proved by other legal evidence; and that in all cases in which the Guardians of any parish or union are or may hereafter be empowered to make any application or complaint, or to take any proceedings before any justices at Petty or Special or General or Quarter Sessions, it shall be lawful for any officer of such Guardians empowered by any Board of such Guardians, by an order in writing, under the hand of the presiding chairman of such Board, and sealed with the common seal of such Guardians, to make such application or complaint, or to take such proceedings on behalf of such Guardians, as effectually to all intents and purposes as if the same were made or taken by such Guardians, or any of them, in person.

Mode of application to justices, &c., by Boards of Guardians.

Guardians may authorise their officers to take legal proceedings.

Section 18. And be it enacted, That the said Act of the fifth year of the reign of his late Majesty, and the Act passed in the sixth year of the reign of his said Majesty, intituled *An Act to facilitate the Conveyance of Workhouses and other Property of Parishes and of Incorporations of Parishes in England and Wales*, and the Act passed in the seventh year of the reign of his said Majesty, intituled *An Act to regulate Parochial Assessments*, and so much of an Act passed in the second year of the reign of her present

Construction.

4 & 5 W. 4, c. 76.

5 & 6 W. 4, c. 69.

6 & 7 W. 4, c. 96.

1 & 2 Vict. c. 56, ss. 118, 122. Majesty, intituled *An Act for the more effectual Relief of the Destitute Poor in Ireland*, as relates to the style of the Poor Law Commissioners, their appointment, the delegation of powers to one of their number, the sittings of their Board, their common seal, and the residence of one of their number in *Ireland*, and all Acts

1 & 2 Vict. c. 25, s. 2. 7 W. 4, & 1 Vict. c. 50. 2 & 3 Vict. c. 84. to amend or extend any of the said Acts, or the said provisions of the Act last recited, and the present Act, shall (except so far as the provisions of any former Act shall be expressly altered or amended by the provisions of any subsequent Act) be construed as one Act; and that in each and every such Act (except the said

Act for the more effectual relief of the destitute poor in *Ireland*) the words "Auditor," "Guardian," "Justice or Justices of the Peace," "Oath," "Officer," "Overseer," "Owner," "Rack-rent," "Parish," "Person," "Poor," "Poor Laws," "Laws for Relief of the Poor," "Poor Rate," "General Quarter Sessions," "Union," "United Workhouse," "Vestry," "Workhouse," and words importing the singular number or the masculine gender only, shall be interpreted as is provided in the first-recited Act; and that the provisions of the said first-recited Act shall extend to every rule, order, or regulation directed or authorized to be made by the said Commissioners under the provisions of an Act passed in the seventh year of his said late Majesty, intituled *An Act for registering Births, Deaths, and Marriages in England*, or by an Act passed in the fourth year of the reign of her present Majesty, intituled *An Act to extend the Practice of Vaccination*.

Act limited to England and Wales.

Section 19. And be it enacted, That, except so far as is hereinbefore expressly excepted, and so far as the continuance in office or appointment of the said Commissioners, their assistant commissioners, secretary, assistant secretaries, and other officers and persons appointed by them, and their removal, no part of this Act shall extend to *Ireland*.

Act may be amended this session.

Section 20. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this present session of Parliament.

SCHEDULE.

FORM:—ANNUAL RETURN.

A TRUE LIST of all INSANE PERSONS, LUNATICS, and Idiots chargeable to the Parishes comprised within [such Part of] the Union [as is situate] in the County of ; specifying the Names, Sex, and Age of each, and whether dangerous or otherwise, and for what Length of Time they have been supposed to be of unsound Mind, and where confined, or how otherwise disposed of.

Name.	Age.	Sex.	Parish to which chargeable.	Where maintained.					Weekly Cost of Maintenance and Clothing.	Whether Lunatic or Idiot.	Dangerous to Himself or Others.	Of dirty Habits.	For what Length of Time supposed to be of unsound Mind.	Observations.
				In a County Asylum, and when sent thither.	In a Licensed House, and when sent thither.	In the Union Work-house.	In Lodgings, or Boarded out, and where.	Residing with Friends, and where.						

Signed by me, this 15th Day of August, 18 ,
A. B.,

Clerk to the Board of Guardians of the said

Union.

EXEMPTION OF UNION AND PAROCHIAL OFFICERS.

By 5 & 6 Vict., c. 109, intituled *An Act for the Appointment and Payment of Parish Constables* [dated 12th August, 1842], it was enacted in

Exemption from serving as Constables.

Section 6. That * * * the clerks of all Boards of Guardians of the Poor, established under the Act for the Amendment and better Administration of the Laws relating to the Poor in *England* and *Wales*; the masters of all *union* workhouses; all registrars and superintendent registrars of births, deaths, and marriages; all churchwardens, *overseers*, and relieving officers, shall be freed and exempt from serving the office of constable under this Act.

And by the Interpretation Clause, section 26, the word "*overseers*" shall be taken to extend to all persons charged with collecting rates for the relief of the poor in any parish."

PAROCHIAL PROPERTY.

In the 4 & 5 Vict. c. 38, intituled *An Act to afford further Facilities for the Conveyance and Endowment of Sites for Schools* [Dated 21st June, 1841,] it was enacted in

Corporations, trustees, &c., empowered to convey the lands for the purposes of this Act.

Section 6. That it shall be lawful for any corporation, ecclesiastical or lay, whether sole or aggregate, and for any officers, justices of the peace, trustees, or commissioners holding land for * * * parochial * * * purposes or objects subject to the provisions next hereinafter mentioned, to grant, convey or enfranchise for the purposes of this Act (i.e. *as a site for a school for the education of poor persons, or for the residence of the schoolmaster or schoolmistress, or otherwise for the purposes of the education of such poor persons in religious and useful knowledge*), such quantity of land as aforesaid (i.e. *not exceeding one acre*) in any manner vested in such corporation, officers, justices, trustees, or Commissioners; * * provided that no parochial property shall be granted for such purposes without the consent of a majority of the rate-payers and owners of property in the parish to which the same belongs, assembled at a meeting to be convened according to the mode pointed out in the Act passed in the sixth year of the reign of his late Majesty, intituled *An Act to facilitate the Conveyance of Workhouses and other Property of Parishes and of Incorporations of Unions of Parishes in England and Wales*, and without the consent of the Poor Law Commissioners, to be testified by their seal being affixed to the deed of conveyance, and of the guardians of the poor of the union within which the said parish may be comprised, or of the guardians of the poor of the said parish where the administration of the relief of the poor therein shall be subject to a Board of Guardians, testified by such guardians being the parties to convey the same.

5 & 6 Vict., c. 18.

An Act to explain and amend the Acts regulating the Sale of Parish Property; and to make further Provision for the Discharge of Debts, Liabilities, and Engagements incurred by or on behalf of Parishes. [13th May 1842.]

Whereas by an Act passed in the Sixth year of the reign of his 5 & 6 W. 4, late Majesty, intituled *An Act to facilitate the Conveyance of* c. 69, s. 1. *Workhouses and other Property of Parishes, and of Incorporations or Unions of Parishes, in England and Wales*, it was among other things enacted, That it should be lawful for the Guardians and overseers of the poor of any parish or union of parishes, under the direction and with the approbation of the Poor Law Commissioners for *England and Wales*, to dispose of, by way of absolute sale, or in exchange for any messuages, lands, or other hereditaments, any lands or buildings, for the purpose of the same being used as a site of a workhouse, or of being occupied with a workhouse, or for any other purpose relating to the relief of the poor which the said Poor Law Commissioners might approve of; and doubts have been raised as to the meaning in certain cases of this provision: Be it therefore enacted, That all sales, lettings, exchanges, or dispositions of lands, buildings, or other property belonging to any parish or union not formed by the Poor Law Commissioners, which shall have been or shall be made for any of the said recited purposes by virtue of the said Act, and of the statute amending the same passed in the first year of the reign of her Majesty, under the order of the said Commissioners, by a majority of the overseers of such parish or of the last acting Guardians of such union respectively, to the Guardians of any union formed by the said Commissioners, shall be and be taken to have been valid.

All sales and dispositions of lands, buildings, &c., by overseers and acting guardians of dissolved incorporations, to unions formed under 4 & 5 W. 4, c. 76, and 7 W. 4, & 1 Vict. c. 50, deemed valid.

Section 2. And whereas by the said Act it was further enacted, that it should be lawful for the Guardians of any parish or union and for the overseers of any parish not under the management of a Board of Guardians, and for the guardians or trustees, guardian or trustee of any dissolved union, or the person or persons who were the guardians or trustees, guardian or trustee of any dissolved union at the time of its dissolution, or a majority of such guardians, trustees, or persons, if more than one, with the approbation and subject to the rules, orders, and regulations of the Poor Law Commissioners, to sell, exchange, let, or otherwise dispose of any workhouse, tenements, buildings, land, effects, or other property belonging to any such parish or union, or vested in trustees or feoffees in trust for such parish or union, or for the parishioners, rate-payers, or inhabitants thereof, or which belong or did belong to any dissolved union, and every or any part of such property, and to convey, assign, or transfer the same accordingly to the purchasers or parties exchanging, as they should direct; which said provisions have been extended by the said Act passed in the first

Explanation of the meaning of 5 & 6 W. 4, c. 69, s. 3.

year of the reign of her present Majesty, and doubts have arisen as to the meaning and extent of such provisions; be it therefore declared and enacted, That the said provisions shall be deemed to have authorized and to authorize the sale, exchange, letting, and disposal, by the guardians of a union formed or to be formed by the said Commissioners, of any workhouse, tenements, buildings, land, effects, or other property belonging to any parish which shall be comprised in the said union, and in cases of the sale, exchange, letting, and disposal of workhouses, tenements, buildings, land, effects, and other property belonging to a dissolved union, to have applied and to apply to a majority of the persons who were the last acting guardians previous to the dissolution of such union:

Proviso
for charita-
ble dona-
tions;
and for
consent of
rate-payers,
&c., to cer-
tain sales,
&c.

Provided always, that nothing in this Act shall be deemed to render valid or to authorize the sale, exchange, letting, or other disposition of any property whatsoever which shall have been given or bequeathed by way of charitable donation, or shall have been allotted in right of some charitable donation or otherwise, for the poor persons of any parish, and not for the general benefit of the rate-payers, parishioners, or inhabitants of such parish, nor to dispense with the consent of the rate-payers and owners of property required by the said last-recited Act to all sales, exchanges, lettings, or other dispositions of property belonging to any parish, except in the case next hereinafter provided.

For sale of
property
belonging
to several
parishes.

Section 3. And be it enacted, That where several parishes shall have been or shall be jointly interested in any workhouse, tenements, buildings, lands, whether of freehold, copyhold, or customary tenure, effects or other property, it shall be deemed to have been and shall be lawful for the said Commissioners, upon the application of the overseers of the major part of such parishes, and with the consent of the rate-payers and owners of property in the major part of such parishes, to be ascertained in the manner directed by the said Act, to order the same to be sold, let, exchanged, or disposed of by the Guardians of the union in which such parishes or the greater part thereof shall be situate, in such manner, and subject to such rules, orders, and regulations, as the said Commissioners shall deem fit; and it shall be deemed to have been and to be lawful for the said Commissioners to direct the application of the produce arising from such sale, letting, or disposition in the same manner and to and for the same purposes as the produce arising from the sales of property belonging to other parishes may be applied to: Provided always, that where any conveyance, by way of sale, lease, exchange, disposition, or otherwise, of any property belonging to a parish or union, whether dissolved or not, shall have been or shall hereafter be made by the guardians of any existing union, or a majority of the last acting guardians of any dissolved union, under the order of the said Commissioners, the same shall be deemed to have been and to be valid for all the purposes of such conveyance, although the legal estate in such property shall be or shall be presumed to be outstanding in some trustee or trustees who shall not have joined in such conveyance; and in cases of copyhold or customary lands the surrender of the

Proviso
that no
trustee shall
be required
to join in
any con-
veyance of
parochial
property.

tenant on the roll, being a trustee for any parish or union, shall not be required, but the admission of the party to whom the guardians or overseers shall, under the authority of the said recited Acts or this Act, have conveyed the same, shall take place, upon the production to the steward of the manor of which such lands shall be held of the conveyance from such guardians or overseers duly executed, and upon payment of such fines, dues, or services to the lord of the manor of which the said lands shall be holden, and his steward, as they respectively would be entitled to upon the admission of such party after a surrender by a tenant on the roll.

Section 4. And whereas by an Act passed in the first year of the reign of her present Majesty, *to explain and amend an Act of the seventh year of his late Majesty, for extending the period for the repayment of loans made under an Act passed in the fifth year of his said late Majesty, for the Amendment and better Administration of the Laws relating to the Poor in England and Wales*, provision was made for payments, in certain cases, out of the produce arising from sales of parish property, in liquidation of the debts, liabilities, or engagements of such parish, and it is expedient to extend the operation of the said Act; be it enacted, That the powers and provisions of the said recited Act shall extend and apply to the payment of any debts, liabilities, or engagements which heretofore have been *bonâ fide* entered into by the parish officers or other person or persons on behalf of any parish, and which shall be proved to the Poor Law Commissioners to have been recognised, within one year before the passing of the said Act of the fifth year of his late Majesty, as existing parish debts, liabilities, or engagements, by the inhabitants of such parish in vestry assembled, or by payment and allowance of interest thereon out of the funds applicable to the relief of the poor of such parish.

Provisions of 1 & 2 Vict. c. 25, for the payment of debts out of the produce of the sale of parochial property extended to any recognised *bonâ fide* debts.

Section 5. And be it enacted, That it shall be lawful for the Poor Law Commissioners, by an order under their hands and seal, upon the receipt of a copy under the hands of the overseers of the poor of any parish of a resolution passed at a meeting of ratepayers and owners of property entitled to vote according to the provisions of the said Act of the fifth year of the reign of his late Majesty, duly convened and held for the purpose, after public notice of the time and place and purpose of holding such meeting shall have been given in like manner as notices of vestry meetings are published and given, consenting to the issue of such order, to direct the said overseers, by equal annual instalments, *not exceeding ten*, to pay or discharge, out of the poor-rates, or other moneys in their hands applicable in aid of the poor-rates of the said parish, any such debt, liability, or engagement as aforesaid, together with all interest due or hereafter to accrue in respect of such debt, liability, or engagement; provided that the said Commissioners shall be satisfied, before they issue any such order, that such debt, liability, or engagement constitutes a fair and just claim against the said parish, and shall approve of and sanction the discharge thereof.

Poor Law Commissioners may, upon receipt of a parochial request, order payment of the aforesaid debts out of the poor-rates.

Overseers
may bor-
row money,
and charge
the same
on the poor-
rates, for
the pay-
ment of
such debts.

Section 6. And be it enacted, That it shall be lawful for the said overseers, and they are hereby required, if so directed by such order and resolution as aforesaid, to borrow any sum that may be requisite to enable them to pay and discharge any such debt, liability, or engagement as aforesaid, or any part thereof, and to charge the poor-rates of the said parish with the repayment of the sum borrowed for such purpose, and the interest thereof, so nevertheless that the sum so borrowed shall be repaid by equal annual instalments, *not exceeding ten*; and every instrument by which the rates shall be charged under the provisions of this Act shall be approved of by the Poor Law Commissioners, and registered in their office.

Provision
for the dis-
charge of
bonds un-
der 22 G.
3, c. 83.

Section 7. And whereas various sums of money have been borrowed under the authority of an Act passed in the twenty-second year of the reign of his Majesty King *George III.*, intituled *An Act for the better Relief and Employment of the Poor*, and securities authorized by that statute have been given in respect of such sums of money, and are now outstanding against the parishes on whose behalf the said sums were advanced, and the provisions of the several statutes in this behalf do not afford a satisfactory mode of liquidating such debts; be it therefore enacted, That where any parish is now or at any time hereafter shall be comprised in any union formed or to be formed under the said Act of the fifth year of the reign of his late Majesty, or shall be under the management of a Board of Guardians, and the poor-rates thereof shall be liable to the payment of any debt duly borrowed and secured under the authority of the said Act of the twenty-second year of the reign of King *George III.*, the Guardians of such union or parish respectively shall be required to make such provision for the liquidation of the said debt in full, or by equal annual instalments, not exceeding ten, as the said Commissioners shall by order under their hands and seal direct; and for such purpose such Guardians are hereby empowered to make any order or orders upon the overseers of such parish as the said Guardians may find necessary, and shall have all the same powers for enforcing such order or orders as they now have by law in regard to the contributions required by such Guardians.

Payments
in respect
of debts
not legally
charged on
the rates or
provided for
under this
Act, illegal,
and to be
disallowed.

Section 8. Provided nevertheless, and be it enacted, That nothing in this Act contained shall be deemed or taken to render any debt, liability, or engagement a valid charge upon the poor-rates of any parish which is not at the time of the passing hereof a subsisting legal charge thereon, except where such resolution shall have been passed and such order shall have been made as aforesaid; and provided always, that every payment out of the poor-rates, either of principal or interest, in respect of any such debt, liability, or engagement, without such order of the said Commissioners, shall be unlawful, and as such disallowed in the accounts of the officer or officers or other person paying the same.

Interpreta-
tion of Act.

Section 9. And be it enacted, That every word used in this Act shall, where the context shall not be at variance with such

interpretation, be deemed to express the meaning assigned thereto in the said recited Act of the fifth year of the reign of his late Majesty ; and every order, regulation, mortgage, security, charge, or other instrument made and executed under the provisions of this Act shall be subject to the same incidents, exemptions, provisions, or regulations as it would have been subject to if made under the powers contained in the said last-recited Act.

VACCINATION.

4 & 5 Vict. c. 32.

An Act to amend an Act to extend the Practice of Vaccination.

[21st June, 1841.]

Whereas an Act was passed in the fourth year of the reign of Her present Majesty, intituled *An Act to extend the Practice of Vaccination*, but no express provision was thereby made for defraying the expenses of carrying the same into execution ; be it therefore declared and enacted, That it shall be and be deemed to have been lawful for the Guardians of every parish or union in *England and Ireland*, and the overseers of every parish in *England*, by whom the contracts for vaccination may respectively be or have been made under the provisions of the said Act, to defray the expenses incident to the execution of the said Act out of any rates or moneys which may come or may have come into their hands respectively for the relief of the poor.

Expenses of vaccination to be defrayed out of the poor-rates.

Section 2. And be it further declared and enacted, That the vaccination, or surgical or medical assistance incident to the vaccination, of any person resident in any union or parish, or of any of his family, under the said Act, shall not be considered to be parochial relief, alms, or charitable allowance to such person, and that no such person shall by reason of such vaccination or assistance be deprived of any right or privilege, or be subject to any disability or disqualification whatsoever.

Vaccination declared not to be parochial relief.

STATUTES RELATING TO APPRENTICES.

5 & 6 Vict. c. 7.

An Act to explain the Acts for the better Regulation of certain Apprentices.

[23rd March, 1842.]

Whereas by an Act passed in the twentieth year of the reign of King George the Second, intituled *An Act for the better adjusting and the more easy Recovery of the Wages of certain Servants, and for the better Regulation of such Servants, and of certain Apprentices*, certain powers were given to justices of the peace in the matter of complaints or applications against their master or mistress by apprentices put out by the parish, or any other apprentice upon whose binding out no larger a sum than five pounds of lawful British money was paid, and also in the matter of applications or

20 G. 2, c. 19.

- complaints upon oath by any master or mistress against any such apprentice: And whereas by another Act, passed in the thirty-third year of the reign of King George the Third, intituled *An Act to authorize Justices of the Peace to impose Fines upon Constables, Overseers, and other Peace and Parish Officers, for Neglect of Duty, and on Masters of Apprentices for Ill-usage of such their Apprentices; and also to make Provision for the Execution of Warrants of Distress granted by Magistrates*, certain other powers were given to justices of the peace, upon complaint made to them by or on behalf of any apprentice to any trade or business whatsoever, whether bound apprentice by any parish or township, or otherwise, provided that not more than the sum of ten pounds was paid upon the binding of such apprentice; all which powers, by an Act passed in the fourth year of the reign of King George the Fourth, intituled *An Act to increase the Power of Magistrates in Cases of Apprenticeships*, were afterwards extended to cases of the like complaints or applications where no larger a sum than twenty-five pounds was paid: And whereas by an Act passed in the thirty-second year of the reign of King George the Third, intituled *An Act for the further Regulation of Parish Apprentices*, certain enactments were made concerning parish apprentices, upon the binding out of whom no larger sum than five pounds had been or should be paid: And whereas doubts have been entertained whether the said Acts apply to the case of any apprentice where no sum of money was paid on the binding of such apprentice; be it declared and enacted, That all the powers and provisions of the said Acts and each of them shall be taken to extend to apprentices where *no sum or premium* of apprenticeship has been or shall be paid on the binding of such apprentice.
- 33 G. 3, c. 55.
- 4 G. 4, c. 29.
- 32 G. 3, c. 57.
- Recited acts declared to extend to apprentices where no premium was paid

In the 3 & 4 Vict. c. 85, intituled

An Act for the Regulation of Chimney-Sweepers and Chimneys,
[Dated 7th Aug. 1840,]

By Section 1 the 4 & 5 Will. IV. c. 35, was continued until the 1st of July, 1842.

No child under 16 years to be apprenticed to a chimney-sweeper.

Section 3 enacts, That from and after the passing of this Act it shall not be lawful to apprentice to any person using the trade or business of a chimney-sweeper any child under the age of sixteen years, and that every indenture of such apprenticeship which may be entered into after such date shall be null and void.

Section 4 enables two justices to discharge any apprentice to a chimney-sweeper from the apprenticeship, on the application of the apprentice at any time between the 1st of July, 1841, and the 1st of July, 1842.

Indentures of children under 16 years to cease after 1st July, 1842.

Section 5 enacts, That from and after the 1st day of July, 1842, all existing indentures of apprenticeship to the trade or business of a chimney-sweeper, of any child who shall then be under the age of 16 years, shall be null and void.

In the 5 & 6 Vict. c. 99, intituled

An Act to prohibit the Employment of Women and Girls in Mines and Collieries, to regulate the Employment of Boys, and to make other Provisions relating to Persons working therein,

[Dated 10th August, 1842,]

It is enacted in section 1 * * * That any indentures of apprenticeship whereby *any female person* who at the passing of this Act was under the age of 18 years shall be bound to work, or be liable to be called on to work, in any mine or colliery, shall, at the expiration of three calendar months from the passing of this Act, be absolutely void; and from and after the 1st day of March, 1843, it shall not be lawful for any owner of any mine or colliery to employ any female person whatsoever within any mine or colliery, or to allow or permit any female person to work or be therein as aforesaid, and every indenture of apprenticeship, or other contract or engagement, whereby any *female person* whatsoever shall be bound to work, or be liable to be called on to work, within any mine or colliery (other than such as are before declared to be void at the end of three calendar months as aforesaid) shall from and after the said 1st day of March, 1843, be absolutely *void*.

Section 4. That from and after the passing of this Act no person or persons shall take any apprentice who shall be bound to work, or be liable to be called on to work, or be otherwise occupied *within* a mine or colliery who shall be under the age of ten years, or for a longer term of apprenticeship than eight years, except as the apprentice of a mason, joiner, engine-wright, or other mechanic whose services may be required occasionally below as well as above ground, and every indenture of apprenticeship whereby any person shall be hereafter bound contrary to the provisions of this Act shall be *void*; and when any person who is now serving under articles of apprenticeship *within* any mine or colliery shall attain the age of 18 years he shall be discharged from such apprenticeship, and the articles of apprenticeship shall become absolutely null and void.

STATUTES RELATING TO LUNATICS.

In the 5 & 6 Vict. c. 87, intituled

An Act to amend and continue for three years, and from thence to the end of the next Session of Parliament, the Laws relating to Houses licensed by the Metropolitan Commissioners and Justices of the Peace for the reception of Insane Persons, and for the Inspection of County Asylums and Public Hospitals for the reception of Insane Persons, [Dated 5th Aug. 1842,]

It is provided, that, with a view to the amelioration of the condition of insane persons, the Metropolitan Commissioners appointed under the statute, when visiting licensed houses, according

to the provisions contained in the statute, shall inquire into the condition of *pauper patients*.

The same Commissioners are also directed by the said Act to visit county lunatic asylums annually, and it is enacted in—

Metropoli-
tan com-
missioners
to report
whether the
provisions
of the law
are acted
upon.

Section 31. That such Metropolitan Commissioners shall, when so visiting such last-mentioned asylums, inquire, and shall by their report in writing state, whether the provisions of the law have been carried out as to the construction of every such asylum, and as to its visitation and management, and also as to the regularity of the admissions and liberations of patients therein and therefrom.

To report
as to any
system of
non-coer-
cion;

Section 32. That such Metropolitan Commissioners shall in like manner inquire and state whether any system of non-coercion, either in whole or in part, is in practice in every such asylum, and, if so, the particulars of such system, and by what means practised, whether by medical treatment or otherwise, and what has been the result thereof.

as to classi-
fication of
patients;

Section 33. That such Metropolitan Commissioners shall also in like manner inquire into and state the classification or non-classification of patients in every such asylum, and the number of attendants on each class, and, so far as is practicable, the proportionate number of attendants before and since the adoption of any system of non-coercion which may have been adopted in such house.

as to in-
door and
out-door
amuse-
ments and
occupa-
tions, and
their effect;

Section 34. That such Metropolitan Commissioners shall also in like manner inquire into and state the occupations and amusements of the patients in every such asylum, and whether the same be in-door or out-door occupations or amusements, and the effect of such occupations and amusements, both in-door and out-door respectively, on the condition, as well mental as bodily, of the patients.

and as to
the condi-
tion of the
pauper pa-
tients when
received
into the
asylum,
and the
dietary;
and to re-
port gene-
rally as to
asylums
and pa-
tients.

Section 35. That such Metropolitan Commissioners shall also in like manner inquire into and state the usual condition, as well mental as bodily, of the *pauper* patients when *first* received into every such asylum, and whether the condition has been such as to prevent or impede the ultimate recovery, either mental or bodily, of such patients, and also inquire into and state the dietary of the *pauper* patients in every such asylum; and such commissioners shall also at such time make such other inquiries as to every such asylum as to them shall seem fit, and shall report thereon in writing, with such observations, as to every such asylum and the patients therein, as to such commissioners shall seem meet.

Similar provisions are made in sections 8, 9, 10, and 11, as to the inspection of licensed lunatic houses.

STATUTES RELATING TO THE POOR-RATE.

4 & 5 Vict. c. 48.

An Act to render certain Municipal Corporations rateable to the Relief of the Poor in certain Cases. [21st June, 1841.]

Whereas the municipal corporations of cities and boroughs named in the Schedules (A) and (B) annexed to the Act passed in the sixth year of the reign of King *William IV.* to provide for the regulation of municipal corporations in *England* and *Wales*, have been held not to be liable by law to be rated to the relief of the poor in respect of any lands, tenements, and hereditaments being the properties and in the occupation of such municipal corporations, by reason that the income arising therefrom is applicable to public purposes only; and it is expedient that such municipal corporations should nevertheless in some cases be rateable and be rated to the relief of the poor in respect of such property: Be it therefore enacted, that the said municipal corporations named in the said schedules shall, from and after the passing of this Act, be rateable and be rated to the relief of the poor in respect of lands, tenements, and hereditaments being the property and in the occupation of such municipal corporations, as if such lands, tenements, and hereditaments were not corporate property, any law, usage, or custom to the contrary notwithstanding: Provided always, that where such property lies in any parish which is situate wholly within the boundaries and limits of a city or borough named in the said schedules, and in which city or borough the poor are relieved by one entire poor-rate, or in which city or borough the poor within the boundaries or limits thereof as existing for municipal purposes at the time of passing the said Act were then relieved by one entire poor-rate, the exemption of such property from rateability shall continue as if this Act had not passed.

Certain
municipal
corpora-
tions rated
to the poor.

Section 2. And be it enacted, That any of the said municipal corporations, being in the occupation of such lands, tenements, and hereditaments as are hereinbefore described, shall be deemed and taken to be beneficial occupiers thereof, for all the purposes of rating, as if such occupation was for their own private advantage, and not for any public purposes or purpose, and shall be liable to be rated as such occupiers by their corporate style and title.

The said
corpora-
tions to be
deemed be-
neficial
occupiers.

Stock in Trade.

The Statute 3 & 4 Vict. c. 89, exempting stock in trade from being assessed to the poor-rate, which would have expired on the 31st Dec. 1841, was continued by the 5 Vict. c. 7, until the 31st July, 1842, and by the 5 & 6 Vict. c. 50, until the 1st day of October, 1843.

*Payments out of the Poor Rate.**Census Expenses.*

In the 3 & 4 Vict. c. 99, intituled

An Act for taking an Account of the Population of Great Britain, [dated 10th Aug. 1840,] it is enacted in

Table of
allowances
to enume-
rators, &c.

Section 16. That the said Commissioners shall prepare a table of allowances to be made to the several enumerators, registrars, and superintendent-registrars, *clerks*, schoolmasters, and other persons employed in the execution of this Act; and such table, when approved by the Commissioners of the Treasury, shall be laid before both houses of Parliament on or before the 1st day of May, 1841, or, if Parliament be not then sitting, within the first fourteen days of the session then next ensuing.

Payments
to be made
to persons
employed
in the exe-
cution of
this Act in
England.

Section 17. That the Justices of the Peace in England at their respective Michaelmas Quarter Sessions in the year 1841, or at the Quarter Sessions following, shall allow to the several enumerators, registrars, and superintendent-registrars, the allowances to which they will be entitled according to the said table, and shall order payment thereof to be made *out of the poor's rate* of the several parishes and places in such proportion as to them shall seem just, which payment shall thereafter be allowed in the accounts of the overseers of the poor; and the said justices at the said Quarter Sessions shall also allow to the parish clerk or any other person who shall have assisted the rector, vicar, curate, or other officiating minister in the execution of this Act, the allowances to which he will be entitled according to the said table, upon his producing a certificate from the said officiating minister to that effect, and shall order payment thereof to be made out of the church-rate *or poor's rate* of the several parishes or places respectively, and the said payment shall thereafter be allowed in the accounts of the several churchwardens or overseers of the poor; provided always, that no such payment shall be made to any enumerator but upon production of a certificate under the hand of the registrar that the duties required of such enumerator by this Act have been faithfully performed; and the like certificate shall be required under the hand of the superintendent-registrar with respect to the registrar, before any payment shall be made to the registrar, and the like certificate under the hand of one of the said Commissioners with respect to the superintendent-registrar, before any payment shall be made to the superintendent-registrar.

In the 4 & 5 Vict. c. 7, intituled

An Act to amend the Acts of the last Session for taking Account of the Population, [dated 6th April, 1841,]

In Section 8 so much of the 3 & 4 Vict. c. 99, § 16, as required the said Commissioners to prepare a table of allowances to any

parish clerk or other person who shall have assisted the rector, vicar, curate, or other officiating minister in England, is repealed.

In Section 9 it is enacted, that the justices of the peace in special or petty session assembled, having jurisdiction in any parish, township, chapelry, or place in England and Wales, shall allow to the several overseers, constables, and other peace-officers and relieving officers who shall be required to act as enumerators under this Act, a reasonable compensation instead of the allowance to enumerators as fixed by the said Commissioners for their labour and trouble necessarily undertaken, and also for their expenses, if any, necessarily incurred by them in the execution of the first-recited Act (*i. e.* 3 & 4 Vict. c. 99) and this Act; and shall also allow to the parish clerk or other person who shall have assisted the rector, vicar, curate, or other officiating minister in the execution of the first-recited Act, a reasonable compensation for so doing, upon his producing a certificate from the said officiating minister to that effect, and shall order payment thereof to be made out of the poor rates of such parish, township, or place, and such payments shall be paid by the overseers, and shall be allowed in their accounts.

Justices in Sessions to allow compensation to enumerators, &c., and order payment thereof out of the poor-rates.

5 Vict. c. 9.

An Act to provide for Payment of the Persons employed in taking Account of the Population in England. [7th October, 1841.]

Whereas by an Act passed in the Fourth year of the reign of her Majesty, intituled *An Act for taking an Account of the Population of Great Britain*, it is among other things provided, that the justices of the peace in *England*, at their respective Michaelmas Quarter Sessions in the year one thousand eight hundred and forty-one, or at the Quarter Sessions following, shall allow to the several enumerators, registrars, and superintendent-registrars, the allowances to which they shall be entitled according to the table of allowances to be made according to the provisions of the said Act, and shall order payment thereof to be made out of the poor's rates of the several parishes and places, in such proportion as to them shall seem just, which payment shall thereafter be allowed in the accounts of the overseers of the poor: And whereas it is expedient that other provisions should be made for payment of the said allowances: Be it enacted, That so much of the said Act as is hereinbefore recited shall be repealed.

Repeal of part of 3 & 4 Vict. c. 99.

Section 2. And be it enacted, That upon the production of the certificates mentioned in the said Act that the duties required by the said Act have been in each case faithfully performed, the Guardians of the poor, or, where there are no such Guardians, the overseers of the poor, in every superintendent-registrar's district in *England*, shall pay to such superintendent-registrar, out of the moneys in their hands as such Guardians or overseers, the whole amount of the allowances to which the said superintendent-registrar and the registrars and enumerators in that district are severally entitled, and each superintendent-registrar shall pay over to the

Manner in which the payments shall be made to persons employed in the execution of 3 & 4 Vict. c. 99, in *England*.

Apportion-
ment of
payments
where more
than one
parish in a
district.
4 & 5 W. 4,
c. 76.

As to extra-
parochial
places.

Guardians,
&c., mak-
ing pay-
ments to
certify
same to
population
Commis-
sioners.

registrars in his district the allowances to which the said registrars and enumerators are entitled, and each registrar shall pay over to the enumerators in his district the allowances to which they are severally entitled, according to the said table ; and the receipts to be given by the enumerators, registrars, and the superintendent-registrars, for payment of their said allowances, shall be finally delivered to the Guardians or overseers, as the case may be ; and where the district of any superintendent-registrar, registrar, or enumerator, contains more than one parish or place, or parts of more than one parish or place, the Guardians established under an Act passed in the fifth year of the reign of his late Majesty, intituled *An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales*, or, if there be no such Guardians, the superintendent-registrar, shall apportion the whole sum so paid or to be paid on account of that district among the several parishes and places of which any part is within such district, in such manner as to them or him shall seem just ; and such apportionment shall be binding upon all persons, and the payment thereof shall be allowed in the accounts of the Guardians and overseers of the poor of the said several parishes and places ; and in every extra-parochial or other place not having overseers of the poor the persons appointed to collect the county or borough rates therein shall be deemed overseers of the poor within the meaning of this Act, and shall pay the amount charged to the account of such place under the provisions of the first-recited Act and of this Act to the Guardians of the union in which such place is situated, or, if it be not situated in any union, to the superintendent-registrar, out of the next moneys in their hands collected for the county or borough rate within such place, and shall be allowed such payment in their accounts ; and if there be any extra-parochial place in which no county or borough rate, or rate in the nature of a county rate, is collected, the treasurer of the county, riding, or division, or borough, shall pay the amount charged to the account of such place out of the moneys in his hands as such treasurer, and shall be allowed such payment in his account.

Section 3. And be it enacted, That the Guardians, overseers, or treasurer by whom any such payment shall have been made shall within one calendar month thereafter certify to the Commissioners for taking account of the population the amount of money so paid by them or him respectively.

Payment for Maps.

In the 5 & 6 Vict. c. 54, intituled

An Act to Amend the Acts for the Commutation of Tithes in England and Wales, and to continue the Officers appointed under the said Acts for a time to be limited, [dated 30th July, 1842,] it is enacted in

Power in
certain

Section 13, That it shall be lawful for any Board of Guardians of any parish or union, with the consent of the Poor Law Commis-

sioners, and subject to such conditions as the said Poor Law Commissioners may prescribe, to pay out of the rates of any parish any portion of the cost of making or providing any map or plan which shall have been confirmed under the hands and seal of the Tithe Commissioners, or any other sum of money, by way of consideration for the use of the said map or plan for the purpose of estimating the net annual value of property in respect of which rates may be assessed for the relief of the poor; and after the Tithe Commissioners shall have certified in writing that such money has been paid, the overseers of the parish, or any person authorized by them in writing, or any officer of the said Board of Guardians, or any person authorized by them in writing, shall at all reasonable times have access to the copy of the said map or plan deposited with the incumbent and church or chapel wardens of the parish or other persons approved by the said Tithe Commissioners, and may inspect and make copies or extracts from the said copy without paying anything for such access or inspection, or for making such copies or extracts.

cases to use
Tithe Com-
mutation
Maps for
parochial
purposes.

Expenses of Constables.

In 5 & 6 Vict. c. 109, intituled

An Act for the Appointment and Payment of Parish Constables,
[dated 12th August, 1842,] it was enacted in

Section 17, That the justices of the county in general or Quarter Sessions assembled shall from time to time, subject to the approval of one of her Majesty's Principal Secretaries of State, settle tables of fees and allowances to the clerks of the justices for the performance of their duties under this Act, and to the constables for the service of summons and execution of warrants, and for the performance of such other occasional duties which may be required of the said constables for which the said justices shall think that fees ought to be allowed; and whenever any duty for which any such fee or allowance shall have been settled, and for which the payment is not by law charged upon the county-rates, shall have been performed by any clerk or by any constable appointed under this Act, the amount of the fee or allowance shall be paid by the overseers of the parish in respect of which such fee has become payable out of any moneys in their hands collected for the relief of the poor, upon the order of the justices in petty session assembled for the division, and under such regulations as shall be made from time to time by the justices in general or quarter session assembled, subject to the approval of the Secretary of State.

Sections 18 and 19 provide for the appointment of one or more paid constables in a parish; and it is enacted in section 20 that the amount of the salary to every such paid constable shall be paid by the overseers out of any moneys in their hands collected for the relief of the poor.

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